

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION

4 GREE, INC., ) ( CIVIL ACTION NOS.  
5 PLAINTIFFS, ) ( 2:19-CV-70-JRG-RSP  
6 VS. ) ( 2:19-CV-71-JRG-RSP  
7 SUPERCELL OY, ) ( MARSHALL, TEXAS  
8 DEFENDANTS. ) ( SEPTEMBER 14, 2020  
9 ) ( 1:13 P.M.  
10 ) (

11 TRANSCRIPT OF JURY TRIAL

12 VOLUME 6 - AFTERNOON SESSION

13 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

14 UNITED STATES CHIEF DISTRICT JUDGE

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16  
17  
18 (Proceedings recorded by mechanical stenography, transcript  
19 produced on a CAT system.)

12:58:27 1 P R O C E E D I N G S

12:58:30 2 (Jury out.)

12:58:31 3 COURT SECURITY OFFICER: All rise.

12:58:35 4 THE COURT: Be seated, please.

01:13:55 5 All right. Counsel, before I bring the jury in

01:14:10 6 and before we continue with Dr. Becker's direct testimony,

01:14:14 7 I met with counsel this morning in chambers regarding

01:14:19 8 disputes that were not resolved in the meet-and-confer

01:14:24 9 process over the weekend.

01:14:26 10 One of the disputes that I took under advisement

01:14:29 11 was objections from the Plaintiff as to three proposed

01:14:36 12 demonstrative slides to be used by the Defendant with Stacy

01:14:46 13 Friedman.

01:14:49 14 As a part of the discussion this morning in

01:14:52 15 chambers, I took down multiple cites from both sides as to

01:14:56 16 where they thought this particular expert's report did or

01:15:00 17 didn't adequately cover those three demonstrative slides.

01:15:10 18 And I've looked at all of that.

01:15:17 19 It's my conclusion that Paragraph 49 in Friedman's

01:15:25 20 rebuttal report in the 70 case, lays out a basis to argue

01:15:33 21 that the selection step involves both touching the icon,

01:15:43 22 moving it, dropping it into the battlefield, and, in

01:15:48 23 effect, combining what Plaintiff argues selection and

01:15:52 24 content removal are.

01:15:54 25 To the extent these three slides are used by the

01:16:00 1 Defendant with this witness to present an argument that  
01:16:04 2 follows Paragraph 49 of the witness's rebuttal report in  
01:16:08 3 the 70 case, they're permitted. And the objection is  
01:16:14 4 overruled.

01:16:15 5 I do not find in all the various other cites to  
01:16:19 6 the various iterations of reports for this expert a basis  
01:16:23 7 to use them otherwise. And that will be the Court's ruling  
01:16:26 8 on those demonstratives.

01:16:33 9 With that, Dr. Becker, if you'll return to the  
01:16:39 10 witness stand.

01:16:40 11 And, Ms. Ludlam, you may return to the podium.

01:16:44 12 MS. LUDLAM: Thank you, Your Honor.

01:16:58 13 MR. SACKSTEDER: Your Honor, before we get  
01:17:00 14 started, I think we had some -- some disputes over some  
01:17:04 15 objections in the trial deposition videos that are to be  
01:17:07 16 played by Defendant in Defendant's case. I think we've  
01:17:10 17 resolved at least one of them.

01:17:12 18 So two of those videos, I think, are now clean,  
01:17:16 19 but there are a couple that remain on the third one. And  
01:17:19 20 since we have to do some editing before we play it, it  
01:17:22 21 might make sense to address that first.

01:17:26 22 THE COURT: All right. Well, tell me where you  
01:17:28 23 are on that issue. I don't have everything with me on the  
01:17:32 24 bench that we discussed in chambers, including those  
01:17:37 25 printed designations and counter-designations.

01:17:42 1 MR. SACKSTEDER: They're not actually  
01:17:45 2 designations, Your Honor. We -- we actually did the trial  
01:17:47 3 depositions of our witnesses and --  
01:17:49 4 THE COURT: Oh.  
01:17:50 5 MR. SACKSTEDER: -- as if they were live.  
01:17:53 6 THE COURT: And I don't have those in front of me  
01:17:55 7 either.  
01:17:56 8 MR. SACKSTEDER: Okay. I apologize, Your Honor.  
01:18:03 9 Apparently, we don't have copies --  
01:18:05 10 THE COURT: Let's get an extra copy, and I think  
01:18:08 11 we've got enough cleared out that we will get to at least  
01:18:12 12 another recess, and we'll take it up during the next  
01:18:15 13 recess.  
01:18:15 14 MR. SACKSTEDER: Thank you, Your Honor.  
01:18:16 15 THE COURT: All right. Let's bring in the jury,  
01:18:20 16 please, Mr. Fitzpatrick.  
01:18:21 17 COURT SECURITY OFFICER: Yes, sir.  
01:18:23 18 All rise.  
01:18:40 19 (Jury in.)  
01:18:51 20 THE COURT: Welcome back from lunch, members of  
01:18:55 21 the jury. Please have a seat.  
01:18:57 22 We will continue with the direct examination of  
01:19:00 23 Dr. Stephen Becker by Plaintiff's counsel.  
01:19:02 24 Ms. Ludlam, you may proceed.  
01:19:04 25 MS. LUDLAM: Thank you, Your Honor.

01:19:04 1 STEPHEN L. BECKER, PH.D., PLAINTIFF'S WITNESS,

01:19:04 2 PREVIOUSLY SWORN

01:19:04 3 DIRECT EXAMINATION CONTINUED

01:19:05 4 BY MS. LUDLAM:

01:19:05 5 Q. Dr. Becker, could you just briefly remind us again what  
01:19:09 6 your regression analysis shows for each of the three games?

01:19:13 7 A. Yes. So the regression analysis establishes the  
01:19:18 8 relationship between time spent in the game and the amount  
01:19:21 9 of spending that a particular player has in the game. And  
01:19:24 10 I have that for each of Clash of Clans, Clash Royale, and  
01:19:29 11 Brawl Stars.

01:19:30 12 Q. Okay. Dr. Becker, let's get into the first patent, if  
01:19:33 13 we will.

01:19:34 14 What is your understanding of the feature or  
01:19:38 15 elements accused with respect to the '594 patent?

01:19:40 16 A. So the '594 patent, it relates to Clash of Clans. And  
01:19:45 17 specifically within Clash of Clans, I understand that to be  
01:19:48 18 the -- what I call the copy layout feature. Dr. Akl talked  
01:19:52 19 a lot about that. It's the ability to copy a layout from  
01:19:55 20 someone else and then deploy that in your -- in your game.

01:20:00 21 Q. Okay. And what did you find when you analyzed the  
01:20:02 22 value of this feature?

01:20:03 23 A. Well, I looked at a number of pieces of evidence -- a  
01:20:09 24 number of types of evidence relating to the value of that  
01:20:12 25 feature.

01:20:12 1 The first place I went was the -- within  
01:20:18 2 Dr. Neal's survey. Again, I'm trying to focus on this  
01:20:22 3 question of what makes paying players -- sort of what --  
01:20:27 4 what -- what are the things that distinguish the paying  
01:20:30 5 players, where all the revenue comes from, from the  
01:20:34 6 non-paying players, and does this particular feature of  
01:20:37 7 this game have any indication about -- about that with  
01:20:40 8 respect to paying players.

01:20:41 9 So Dr. Neal, as he said in his testimony, that  
01:20:45 10 awareness, usage, and importance is significantly higher  
01:20:49 11 for paying players on this. So we see on each one of these  
01:20:55 12 measures a significant increase in the usage, awareness,  
01:21:01 13 and importance within the set of paying players.

01:21:04 14 And so that was important to me and gave me the  
01:21:09 15 beginnings of a way to quantify the value of this feature.

01:21:13 16 Q. And did you see any other evidence indicating the value  
01:21:15 17 of the copy layout feature?

01:21:16 18 A. Yes. So I stepped away from Dr. Neal's survey, and  
01:21:20 19 went and said, let me look both within Supercell for  
01:21:25 20 evidence of essentially why Supercell created this feature  
01:21:28 21 and why they put it in the game, what they thought it was  
01:21:32 22 going to do, and also amongst industry reviews what people  
01:21:38 23 who review these games thought about this feature.

01:21:41 24 Q. Okay. Let's talk first about internally at Supercell  
01:21:45 25 what you saw. What are we about to see here?

01:21:48 1 A. So the next series of slides are five or six -- I think  
01:21:52 2 it's maybe five different excerpts from largely an internal  
01:21:58 3 chat. Supercell has a tool called Slack that allows people  
01:22:02 4 within the company to essentially -- it's almost like  
01:22:04 5 texting each other, but it's a little more formal way to do  
01:22:08 6 it.

01:22:08 7 This starts in October of 2017 where I can see  
01:22:15 8 this sort of conception of this feature. Stephan  
01:22:17 9 Demirdjian -- I'm not sure I'm pronouncing his name  
01:22:22 10 right -- says: Started wondering if cloning an enemy base  
01:22:27 11 layout feature would not only be a great quality of life  
01:22:33 12 improvement but could this be one of those small  
01:22:33 13 improvements with a big impact.

01:22:35 14 So they've -- thinking -- remember we talked  
01:22:36 15 earlier about micro-triggers. This may be one of those.

01:22:39 16 So if we skip forward, this is literally the same  
01:22:42 17 day: Layout copying could have some abuse scenarios, but  
01:22:48 18 anything to help with making Clash of Clans more of a pick  
01:22:53 19 up and play game would feel good.

01:22:53 20 If we flip ahead. Here's Aki Immonen saying that  
01:22:59 21 copying a village layout would be a very useful feature.  
01:23:02 22 And he's saying that, look, if you have to do this  
01:23:06 23 manually, it's a real pain. And so that's, again, time  
01:23:09 24 saving, quality of life improving feature.

01:23:12 25 Here we see the -- this idea of quality of life

01:23:16 1 improvement, both Marika Appel saying that -- when asked:  
01:23:21 2 What do you guys think about copy layout? And then down at  
01:23:24 3 the bottom Darian Vorlick says: It definitely -- it'd  
01:23:31 4 definitely save a lot of time and definitely a big quality  
01:23:34 5 of life improvement.

01:23:35 6 And Jason Dou -- this is quite a bit later. We  
01:23:39 7 jump forward to June 12th of 2018, and he says: Cool, by  
01:23:45 8 the way, I love the copy layout function.

01:23:47 9 And so, again, I think this is after they have got  
01:23:50 10 it in the game and are testing it.

01:23:51 11 Q. And, Dr. Becker, this PTX-74, you're saying that's  
01:23:55 12 after the copy layout feature was included?

01:23:58 13 A. I believe that -- at least he's looking at -- I don't  
01:23:59 14 know if it's been widespread released, but it's definitely  
01:24:04 15 after it's in the game.

01:24:05 16 Q. And those were -- those were all, you said, internal  
01:24:09 17 Slack messages from Supercell employees?

01:24:11 18 A. Yes.

01:24:12 19 Q. Great. What conclusions did you draw from this  
01:24:14 20 evidence?

01:24:14 21 A. So that tells me that, quite independent of Dr. Neal's  
01:24:20 22 quantitative analysis, we're dealing with a feature that  
01:24:23 23 was put in the game for a reason. They were attempting to  
01:24:29 24 not only save people time but generate what we saw a number  
01:24:33 25 of times called quality of life improvement. We see this

01:24:37 1 also being referred to as, you know, more engaging.

01:24:41 2 So I went back to Dr. Neal's survey and his survey  
01:24:47 3 results, and said, okay, the evidence, both within the  
01:24:51 4 survey in terms of the increase in awareness and usage and  
01:24:55 5 importance and the internal Supercell evidence, tells me  
01:24:59 6 that this is an important and useful feature. Let's see  
01:25:04 7 what various measures to quantify the value of that are.  
01:25:08 8 And the first -- the first one is on the next slide.

01:25:11 9 Q. And how did you do that?

01:25:12 10 A. So Dr. Neal, he testified about his logistic  
01:25:17 11 regression. This is the graph for Clash of Clans that  
01:25:20 12 shows the probability of making an in-app purchase if a  
01:25:27 13 particular Clash of Clans' function is perceived as  
01:25:32 14 important by the player. And he found that there was a  
01:25:34 15 9 percent increase in the likelihood of being a paying  
01:25:38 16 player.

01:25:39 17 When I take into account the percentage of players  
01:25:42 18 who found that feature important, what that tells me, down  
01:25:47 19 in the lower right, is that the copy layout feature is  
01:25:49 20 associated with 3.36 percent of Clash of Clans revenues.

01:25:54 21 Q. And how did you use this data, Dr. Becker?

01:25:57 22 A. So that -- that by itself was a data point that said,  
01:26:00 23 okay, that's one way to value the feature is to just look  
01:26:03 24 at, is it important to players generally? And we see that  
01:26:09 25 that would give me a basis for saying that 3.36 percent of

01:26:13 1 the revenues were attributed to this feature.

01:26:16 2 I wanted to dig a little deeper and see if I could  
01:26:19 3 put a finer point on that, so I went and used some  
01:26:22 4 additional data.

01:26:23 5 Q. Okay. What other analysis of the incremental value did  
01:26:26 6 you perform on the patent?

01:26:28 7 A. So the next analysis I did was to look at Dr. Neal's  
01:26:32 8 survey result where he asked players of Clash of Clans if  
01:26:37 9 this feature were gone, what would happen.

01:26:40 10 And we heard him talk about the fact that some  
01:26:44 11 number of those players, in particular some number of the  
01:26:47 12 paying players, said, look, if you take this away, I'm  
01:26:50 13 going to play the game less.

01:26:52 14 So that was -- in terms of paying players who  
01:26:55 15 thought the feature was important, out of all players,  
01:26:59 16 that's 10.5 percent. I then took that, and he had another  
01:27:06 17 question that asked them, how much time would you decrease?  
01:27:12 18 And they said on average, 57.48 percent reduction in  
01:27:16 19 playing time.

01:27:18 20 I take those two together, and it gives me an  
01:27:20 21 estimate of the overall across all paying players, there  
01:27:24 22 would be a 6 percent decline in playtime.

01:27:27 23 I can then take that against that regression  
01:27:30 24 analysis of the time versus money and hit it with the 21.1  
01:27:36 25 percent. And what that yields is an estimated revenue

01:27:40 1 impact, if you were to take this feature away, of 1.27  
01:27:46 2 percent.

01:27:47 3 Q. And what did you do next?

01:27:50 4 A. So to turn this -- this is essentially Supercell's  
01:27:56 5 incremental revenue that I've estimated from this feature.

01:28:00 6 So when they earn an extra dollar from having this  
01:28:06 7 feature in, the question is, how much of that do they keep?  
01:28:10 8 Is it all profit?

01:28:10 9 And just at the margin -- in economics we talk  
01:28:14 10 about certain marginal profit, one more dollar. Well, one  
01:28:17 11 thing I know is that even if it's just an additional  
01:28:20 12 dollar, Supercell has to pay part of that to Apple and  
01:28:23 13 Google because they host the Play Store and the Apple  
01:28:31 14 iTunes Store. So I want to take that out.

01:28:32 15 And the other thing was -- that I noticed from  
01:28:34 16 looking at the financial statements and also lots of other  
01:28:37 17 evidence about this game in this industry is that marketing  
01:28:41 18 spending is a significant part of what drives people to use  
01:28:43 19 the games.

01:28:44 20 And since we're talking about a feature that is  
01:28:48 21 part of what needs to be promoted in the game, I thought it  
01:28:52 22 was reasonable in terms of the negotiated royalty rate to  
01:28:56 23 essentially reduce this rate by the factor for the  
01:28:58 24 marketing spend that Supercell has to do to create every  
01:29:03 25 dollar of revenue.

01:29:04 1 Q. And, Dr. Becker, is what we're looking at here, is that  
01:29:07 2 the reduction that you made for those commissions in  
01:29:11 3 marketing?

01:29:11 4 A. Yeah. So commissions on average are 29 percent, and  
01:29:18 5 marketing spending on average is 16 percent. Combined,  
01:29:20 6 that's 45 percent -- 45 cents out of every dollar. What  
01:29:23 7 that leaves you with is 55 percent of the dollar.

01:29:26 8 So if their revenue is going to go up by 1.27  
01:29:30 9 percent, after adjusting for commissions and marketing,  
01:29:33 10 that gets me down to .7 percent.

01:29:36 11 Q. And are there any other costs that we need to take into  
01:29:40 12 account in this analysis?

01:29:42 13 A. No, I don't think there are. Supercell certainly has  
01:29:47 14 lots of other costs, but none of them are on that marginal  
01:29:55 15 dollar of revenue. None of them reasonably would increase  
01:29:58 16 if they put this feature in and they make a little more  
01:30:01 17 money. Their marketing spend might go up. Definitely  
01:30:04 18 their commissions go up. But the cost of their office  
01:30:08 19 building in Sweden doesn't go up. The number of people  
01:30:11 20 they have in operations doesn't go up.

01:30:14 21 So in economics, we look at those marginal costs,  
01:30:18 22 and I think that the marketing and commissions are the only  
01:30:21 23 ones that would be marginally associated with this  
01:30:23 24 particular feature.

01:30:25 25 Q. Okay. And were there any other results from Dr. Neal's

01:30:28 1 survey that you needed to consider here?

01:30:29 2 A. Yes. I actually looked at and used in my analysis in

01:30:40 3 terms of the things I considered, some other aspects of his

01:30:43 4 survey.

01:30:43 5 And one of them was something that was talked

01:30:45 6 about earlier today that there were -- a portion of the

01:30:47 7 players who took his survey when asked what would happen if

01:30:54 8 the feature went away, actually said: Well, I'll spend

01:30:57 9 more time.

01:30:58 10 And so I had to consider, you know, is that

01:31:04 11 additional time? What is the nature of that additional

01:31:06 12 time? And is there an economic reason to put it in on an

01:31:11 13 equal basis with the spend less time or is it of a -- is

01:31:15 14 there evidence that will -- that would lead me to the

01:31:18 15 conclusion that it is materially a different sort of time.

01:31:21 16 Q. So if we were to just consider that piece of data from

01:31:25 17 Dr. Neal without any other context, what would that do to

01:31:29 18 your calculation?

01:31:30 19 A. Well, if I just blindly said I'm going to ignore the

01:31:34 20 evidence and just look at the survey results and say some

01:31:37 21 people say if you take this feature away, we're not going

01:31:40 22 to play as much, and some other people say we're going to

01:31:43 23 play more, and I net them together, actually net net, it

01:31:47 24 would suggest mathematically that people would play a -- a

01:31:51 25 little bit more. And mathematically that would reduce this

01:31:57 1 royalty rate literally to zero and say the feature is not  
01:31:59 2 worth anything.

01:32:00 3 Q. Did you consider that to be reasonable?

01:32:01 4 A. No. I looked at a significant amount of evidence  
01:32:05 5 that -- in the record to really kind of make this decision  
01:32:09 6 about whether is it reasonable to net those and reach the  
01:32:15 7 conclusion that the feature making people spend more time  
01:32:18 8 would be productive in the sense of engagement with the  
01:32:23 9 game, or would it be materially some other kind of time.

01:32:26 10 And I -- the evidence is clear that the kind of time that  
01:32:30 11 those people would be spending is not productive time.

01:32:34 12 Q. Okay. And so you did find evidence in the record about  
01:32:38 13 whether or not to net those spending more time versus less  
01:32:44 14 time?

01:32:44 15 A. Yes, I looked at that. And this is -- you know, the --  
01:32:50 16 the -- the chat messages that we talked a little -- that I  
01:32:53 17 showed you a few minutes ago really get to this issue that  
01:32:57 18 the entire purpose of this feature was time saving.

01:33:01 19 We saw one of the people say if you have to go,  
01:33:04 20 you know, take a picture of somebody's layout and write it  
01:33:10 21 down and build it by hand, that's a real pain. It's --  
01:33:15 22 certainly they were saying that is detrimental to quality  
01:33:17 23 of life within the game.

01:33:19 24 So let's give these people a feature that will  
01:33:23 25 save them time and improve their quality of life. What

01:33:23 1 Mr. Peltola is talking about here is grinding. That's the  
01:33:25 2 term that Supercell uses internally; that if you make  
01:33:31 3 people do things that's no fun, it is not a meaningful  
01:33:40 4 experience. And as he says here: Grinding is generally  
01:33:45 5 considered detrimental to a player experience.

01:33:49 6 So all the evidence I had was telling me that that  
01:33:51 7 bucket of spend more time made sense that a few people  
01:33:54 8 said, yeah, I still got to build this layout somehow, so  
01:33:57 9 I'm going to have to do it by hand. But that's not  
01:34:00 10 productive, happy spending time in the game.

01:34:03 11 So I chose to say I'm going to set that aside, not  
01:34:07 12 give it as much weight as the spend less time people and  
01:34:11 13 use the spend less time in the game if the feature is gone  
01:34:14 14 as the basis to value the feature.

01:34:15 15 Q. So it's not that you simply ignored Dr. Neal's survey  
01:34:19 16 results?

01:34:20 17 A. No. Actually, the calculations of what would happen if  
01:34:24 18 you did it, I've laid all those out in my report. And then  
01:34:27 19 I laid out the reasons why I think the only answer that is  
01:34:34 20 consistent with the evidence about why they built this  
01:34:36 21 feature in the first place is that we look at the spend  
01:34:39 22 less time and value it at that one -- at that .7 percent  
01:34:44 23 level.

01:34:44 24 Q. Great. And so does that complete your analysis with  
01:34:48 25 respect to the '594?

01:34:49 1 A. It did.

01:34:49 2 Q. Okay. What do we do next?

01:34:51 3 A. So next we go to Clash Royale. And within Clash  
01:34:55 4 Royale, the first place to go is the '655 patent, which is  
01:35:00 5 shorthand, card donation patent.

01:35:02 6 Q. And is the methodology that you used to value the '655  
01:35:06 7 patent similar to what we did or the same as what we just  
01:35:10 8 did with the '594?

01:35:11 9 A. Yes. Essentially, all the steps, all the types of  
01:35:14 10 information I looked at, the categories of information, and  
01:35:16 11 the analytical and mathematical steps were the same.

01:35:20 12 Q. Okay. So let's discuss some of the evidence that you  
01:35:22 13 considered was important to determining the value of the  
01:35:25 14 '655 patent.

01:35:25 15 A. Okay. So, first, I think let's go to -- I had some  
01:35:29 16 financial data. Actually it was one of the few features  
01:35:33 17 where I had granular data that I could tie specifically  
01:35:40 18 to -- make a correlation between money and the use of the  
01:35:43 19 feature.

01:35:44 20 And what I found was that 87 percent of all of the  
01:35:47 21 revenue from Clash Royale comes from players who donate,  
01:35:53 22 request, and receive cards. And only 13 percent of the  
01:35:56 23 revenue is from players who don't use that whole donation  
01:36:00 24 and -- and requesting and receiving cards element of the  
01:36:04 25 game.

01:36:04 1 Q. And, Dr. Becker, did you use PTX-87 in order to  
01:36:09 2 determine that --

01:36:09 3 A. Yes.

01:36:09 4 Q. -- calculation?

01:36:13 5 MS. LUDLAM: Mr. Groat, could you quickly pull up  
01:36:17 6 PTX-87 for me?

01:36:21 7 Q. (By Ms. Ludlam) And is this the spreadsheet that you  
01:36:28 8 used to calculate the information that appeared on your  
01:36:31 9 slide?

01:36:31 10 A. Yes.

01:36:31 11 Q. Okay. Thank you.

01:36:33 12 MS. LUDLAM: Thank you, Mr. Groat.

01:36:35 13 Q. (By Ms. Ludlam) Is there any other evidence that you  
01:36:37 14 considered in order to determine the value -- value of the  
01:36:40 15 '655?

01:36:40 16 A. Yes. So in reviewing the evidence in the record, I  
01:36:43 17 found that there were some surveys that -- that Supercell  
01:36:46 18 had done internally relating to Clash Royale and this --  
01:36:51 19 this feature.

01:36:53 20 And this is one where Clash Royale players were  
01:37:00 21 asked: Which of the following experiences are most central  
01:37:02 22 to your enjoyment of Clash Royale?

01:37:06 23 And upgrading cards to make more progress was  
01:37:12 24 central to the enjoyment for 58 percent of the people.

01:37:15 25 And, notably, the heavy payers who spend more than

01:37:18 1 a hundred dollars, actually rated that at 62 percent.

01:37:23 2 Q. Great. And that survey, I think, was depicted in the  
01:37:28 3 video we just saw --

01:37:29 4 A. Yes.

01:37:29 5 Q. -- PTX-61? Thank you.

01:37:33 6 Was there any other evidence in the record that  
01:37:35 7 you considered in valuing the patent?

01:37:37 8 A. Yes, there was at least one other survey. This one is  
01:37:40 9 from February of 2020 looking -- where they asked:  
01:37:45 10 Considering your current clan and clan mates, how  
01:37:49 11 interested are you in doing the following?

01:37:51 12 And then present them with a number of possible  
01:37:53 13 things. And helping clan mates to upgrade cards was the  
01:37:57 14 highest rated activity that people were interested in  
01:38:02 15 doing. And that out of these activities would be the one  
01:38:05 16 that -- sort of within which we would find the -- the --  
01:38:08 17 the accused infringing feature.

01:38:09 18 Q. Okay. And -- and PTX-97 is what is represented on this  
01:38:15 19 screen?

01:38:16 20 A. Yes.

01:38:16 21 Q. Okay. Did you rely on -- just as you did with the  
01:38:21 22 '594, did you rely on similar survey results from Dr. Neal?  
01:38:24 23 A. Yes. So, again, the -- the first step was the  
01:38:27 24 high-level awareness, usage, and importance analysis that  
01:38:31 25 Dr. Neal did. He was sort of asking a bunch of questions.

01:38:35 1 I was really focused on the difference between paying  
01:38:37 2 players and non-paying players.

01:38:40 3 And, here, just like before, we see that  
01:38:44 4 awareness, usage, and importance is significantly higher  
01:38:47 5 for paying players when asked specifically about the '655  
01:38:53 6 patent card donation feature.

01:38:54 7 Q. And did you also consider a logit model that Dr. Neal  
01:38:59 8 ran for this patent, as well?

01:39:01 9 A. Yes. So this data on this slide is sort of a general  
01:39:04 10 directional. Yes, it's more important and more valuable to  
01:39:07 11 paying players.

01:39:09 12 The next step is to go to Dr. Neal's logistic  
01:39:13 13 regression where he puts a finer point on it to say, what's  
01:39:17 14 the probability of making an in-app purchase if you find  
01:39:23 15 this card donation feature to be important?

01:39:29 16 When I take his logistic regression results and  
01:39:32 17 sort of run them through the economic analysis to say  
01:39:35 18 what's the impact on revenue, I get an 8.6 percent impact  
01:39:40 19 on Clash Royale revenues.

01:39:41 20 Q. And did you also consider your time versus spending  
01:39:44 21 regression results with respect to Clash Royale?

01:39:47 22 A. Yes.

01:39:49 23 Q. Okay. So what did you ultimately conclude, after  
01:39:51 24 looking at all of this evidence, that the impact on  
01:39:55 25 Supercell's revenue was that's associated with the card

01:39:59 1 donation patent?

01:39:59 2 A. So I ultimately -- if we go to the next slide, we can

01:40:02 3 see I started with the percent of paying players who would

01:40:07 4 spend less time in the game.

01:40:09 5 For this feature, it was 24.9. The average

01:40:16 6 percent decrease in time, multiply those together, I get

01:40:19 7 the net -- well, not the net, the -- the reduction in

01:40:24 8 playing time across all players, 11.6 -- 11.76 percent.

01:40:30 9 That then needs to be multiplied by that

01:40:34 10 regression coefficient of time versus spending of .169 for

01:40:40 11 this game, and that gets to a revenue impact of 1.99

01:40:43 12 percent.

01:40:44 13 That's Supercell's marginal revenue, but I need to

01:40:47 14 turn that into a reasonable royalty rate that they would

01:40:50 15 agree to. If I take out the commissions and marketing,

01:40:54 16 just like I did before, that gets to a 1.1 percent royalty

01:40:59 17 rate.

01:40:59 18 Q. And, Dr. Becker, again, did you consider the other

01:41:04 19 information from Dr. Neal's survey in arriving at your

01:41:08 20 final rate here?

01:41:09 21 A. Yes. There -- absolutely in his survey was this other

01:41:17 22 bucket of respondents that said: Well, gosh, if you take

01:41:20 23 that feature away, I'm going to have to spend more time.

01:41:24 24 And so for essentially all the same reasons, I

01:41:25 25 went and did the same kind of research into the nature of

01:41:28 1 the additional time that they would spend.

01:41:29 2 I concluded that that additional time would be  
01:41:32 3 grinding time, that non-productive quality of life  
01:41:39 4 detrimental time, and that, therefore, I would set that  
01:41:41 5 aside. And even though I ran the numbers, they actually  
01:41:47 6 would have reduced this royalty from 1.1 percent to .45  
01:41:53 7 percent.

01:41:53 8 But the question is, is that reasonable? Well,  
01:41:55 9 no. I mean, they put this feature into the game for a  
01:41:59 10 purpose, to improve people's quality of life. And it makes  
01:42:03 11 sense that for some people, if you take it away, they're  
01:42:06 12 going to have to grind away to get the same upgrades that  
01:42:10 13 they otherwise would have with this feature.

01:42:12 14 Q. Okay. If we go back to your summary slide, we can fill  
01:42:16 15 in the rate for the '655?

01:42:17 16 A. Yes.

01:42:18 17 Q. Okay. Now, what's next?

01:42:18 18 A. So next we go to the '137 and '481 patents, which is  
01:42:24 19 the Elixir feature within Clash Royale.

01:42:26 20 Q. Okay. And is the methodology that you use to value the  
01:42:30 21 '137 and the '481 the same as what we just saw?

01:42:33 22 A. No. No, it differs in some substantial ways.

01:42:36 23 Q. Why does it differ?

01:42:38 24 A. Well, the nature of the feature that's accused here is  
01:42:42 25 fundamentally different. With the card donation feature

01:42:45 1 and the copy layout feature, these are relatively small  
01:42:52 2 aspects of the game. You don't encounter it every time you  
01:42:55 3 play the game, and they're optional. I mean, we saw that  
01:42:58 4 some people don't even use it. Some players aren't even  
01:43:01 5 aware of the card donation and copy layout.

01:43:04 6 Talking to Dr. Akl, I understood that the --  
01:43:07 7 what's accused with respect to the '137 and '481 is core to  
01:43:14 8 the nature of the gameplay. It's essentially kind of woven  
01:43:18 9 into the fabric of the game. And so it's not something  
01:43:21 10 that you can say do you like this or not.

01:43:24 11 That's like asking somebody if they -- do they  
01:43:26 12 like playing golf without golf clubs. Well, that would  
01:43:29 13 be -- that wouldn't be a very interesting question to ask  
01:43:34 14 because the clubs in your bag are kind of woven into the  
01:43:38 15 fabric of playing the game. And what I understood was,  
01:43:41 16 Elixir is the same way.

01:43:42 17 Q. Okay. So what evidence did you consider to form your  
01:43:45 18 determinations with respect to these patents?

01:43:47 19 A. So, first, I went to look at -- just sort of industry  
01:43:50 20 and any -- any kind of evidence I could find that would  
01:43:59 21 tell me, how important is this?

01:44:01 22 I mean, Dr. Akl says it's in the fabric of the  
01:44:03 23 game. Everybody is going to encounter it, but there are  
01:44:06 24 things clearly in the game that you encounter that aren't  
01:44:10 25 important and other things are.

01:44:11 1 So I went and looked at -- for evidence of how  
01:44:15 2 important this was. And I've got three things here. There  
01:44:18 3 were others. These are reviews of the game.

01:44:21 4 The first one says each card has its own Elixir  
01:44:25 5 cost, and managing this is the heart of the game.

01:44:28 6 The Forbes article on Clash Royale says right  
01:44:32 7 upfront: It's all about Elixir.

01:44:34 8 The -- this article on the right-hand side says:  
01:44:41 9 Elixir is the most important thing of any match in Clash  
01:44:43 10 Royale. And they say it's the key to winning matches  
01:44:46 11 online.

01:44:46 12 Q. So how does this information impact your analysis?

01:44:49 13 A. So that tells me that this is something at -- you know,  
01:44:55 14 again, we're ultimately trying to figure out what the  
01:44:57 15 parties would agree to sitting at the table. This is one  
01:45:01 16 where sitting at that table, GREE is going to know and  
01:45:05 17 Supercell is going to know that these patents get to the  
01:45:07 18 heart of one of the most important -- something that is key  
01:45:11 19 to the game.

01:45:13 20 And so that tells me directionally that this is  
01:45:16 21 going to be more valuable than an optional feature within  
01:45:20 22 the game. This -- this evidence and other evidence tells  
01:45:23 23 me that.

01:45:24 24 Q. So how did you use this to establish a royalty rate for  
01:45:29 25 the '137 and '481?

01:45:31 1 A. So I did something that's not unlike if you were trying  
01:45:35 2 to figure out a house -- you know, green house on the  
01:45:38 3 corner is worth, but you haven't -- you need to appraise  
01:45:42 4 that, but you have a comp from the blue house in the middle  
01:45:45 5 of the block. Maybe it's a little bit smaller, not as  
01:45:48 6 important, not as prominent. But you do -- you do know  
01:45:52 7 what the value of that house in the middle of block is, or  
01:45:54 8 at least you have an appraisal of it.

01:45:57 9 So I talked to Dr. Akl and said: Are there any  
01:46:00 10 comps that I can look to for the '137 and '481 patents?  
01:46:06 11 And he told me that the '655 patent, which is the optional  
01:46:10 12 card donation feature, was comparable, not the same in  
01:46:14 13 value, but it's comparable. And so I decided to use that  
01:46:18 14 as a comp in this negotiation for valuing the '137 and '481  
01:46:26 15 Elixir patents.

01:46:27 16 Q. Okay. So if we start with the 19 -- 1.99 percent,  
01:46:33 17 where do you go from there?

01:46:34 18 A. Yeah. So this -- this starting rate, it's not the  
01:46:37 19 royalty, but it's the -- that incremental revenue impact  
01:46:44 20 that after looking at my regression and various parts of  
01:46:47 21 Dr. Neal's survey, I was able to determine that the  
01:46:49 22 optional card donation feature is responsible for 1.99  
01:46:53 23 percent of Supercell's Clash Royale revenue. That's my  
01:46:59 24 comp.

01:47:00 25 So now I need to adjust it, just like if the house

01:47:03 1 on the corner has 20 percent more square footage, you're  
01:47:07 2 going to need to up the price.

01:47:09 3 So the measure that I used to make the adjustment  
01:47:12 4 is the extent of use. The optional feature, we know from  
01:47:17 5 Dr. Neal's survey, is used 68.5 percent of the time -- or  
01:47:22 6 by 68.5 percent of the users. Elixir is used by everybody.

01:47:28 7 Dr. Akl tells me that, and the articles make it  
01:47:30 8 clear that you can't even play the game without using  
01:47:32 9 Elixir. So that's a hundred percent. A hundred percent is  
01:47:38 10 1.46 times as big as 68-and-a-half percent.

01:47:41 11 So it's like a square footage adjustment in a  
01:47:45 12 house appraisal. I increase the 1.99 percent valuation  
01:47:52 13 to -- if you'll click, it will do the math for me -- 2.9  
01:47:56 14 percent.

01:47:57 15 That then gives me an estimated valuation in total  
01:48:00 16 that I need to then take down to a royalty. And to that, I  
01:48:05 17 apply the same commissions and marketing adjustment, and I  
01:48:08 18 get a royalty rate of 1.6 percent.

01:48:11 19 Q. And is that the final royalty rate that you determined  
01:48:15 20 for the '137/'481?

01:48:18 21 A. It is.

01:48:19 22 Q. We can go back and fill in your chart.

01:48:22 23 And it looks like Brawl Stars is next.

01:48:25 24 A. Yeah, that's the last one, the '873.

01:48:28 25 Q. Okay. And is the methodology to arrive at the '873

01:48:31 1 similar to the approach we took for the last two patents,  
01:48:36 2 the '137 and '481?

01:48:38 3 A. Yeah, it's essentially just like the Elixir and unlike  
01:48:42 4 the card donation and the copy layout. The shooting and  
01:48:46 5 aiming control, is, again, based on my discussion with  
01:48:49 6 Dr. Akl, central, core to the game. You can't play the  
01:48:53 7 game without using the aiming controls and the shooting  
01:48:57 8 controls. So I follow the same path.

01:48:59 9 First look to some evidence about whether this is,  
01:49:03 10 in fact, important and valuable, and then find a comp and  
01:49:09 11 then adjust the comp.

01:49:11 12 Q. Okay. Let's look at that evidence.

01:49:13 13 A. Okay. Interesting thing with Brawl Stars in this  
01:49:17 14 particular feature is they actually -- Supercell did a soft  
01:49:19 15 release of the game without these controls. They had a  
01:49:25 16 different way of controlling the gameplay. So we have kind  
01:49:28 17 of a natural experiment here where they put a  
01:49:31 18 non-infringing version of this out into the marketplace,  
01:49:35 19 and they were able to get some reviews back.

01:49:37 20 Here, we're looking at an internal discussion  
01:49:42 21 from -- let me see, this is from March of 2017, and they're  
01:49:45 22 talking about the -- the top dislikes from the latest  
01:49:50 23 survey, and the top three griefs.

01:49:55 24 And the No. 1 grief and complaint about this game  
01:49:59 25 was that the controls didn't work. They -- they didn't

01:50:02 1 feel comfortable with the controls.

01:50:03 2 So if we go to the next one, that last one was  
01:50:09 3 internal Supercell. These are external reviews of the  
01:50:12 4 game, and what they're reviewing here specifically is the  
01:50:14 5 soft launch version that did not have the accused control  
01:50:23 6 in it. And we see, again, same thing, nobody liked it.

01:50:26 7 The one on the left says that it's -- they said  
01:50:29 8 that once people started playing, the developers realized  
01:50:33 9 that movement wasn't working.

01:50:34 10 Over on the right, they said the second  
01:50:37 11 fundamental issue that: The game's action phase has tried  
01:50:40 12 and failed to solve multiple times is how complex and  
01:50:43 13 imprecise the controls are.

01:50:44 14 Clearly, the controls are a problem. What did  
01:50:47 15 they do? They completely revamped them. I think we heard  
01:50:51 16 some testimony about that. And they put in place the one  
01:50:56 17 that's accused of infringing in this case.

01:50:58 18 And I went and looked, what did people say about  
01:51:02 19 with that one. That one came out -- here's a review after  
01:51:05 20 it came out and saying: The most surprising thing about  
01:51:08 21 Brawl Stars is how good it feels. Mobile shooters are  
01:51:12 22 notoriously frustrating due to the inaccuracy of the  
01:51:18 23 touchscreens. Brawl Stars isn't perfect, but somehow I  
01:51:21 24 never found myself fighting with the controls.

01:51:23 25 So this -- they essentially fixed the problem.

01:51:27 1 Q. How did you use this evidence to establish a royalty  
01:51:29 2 rate related to the '873?

01:51:30 3 A. So, again, this told me that this was something that  
01:51:33 4 was sitting at the negotiating table. Everybody is going  
01:51:34 5 to realize that we're talking about something that's --  
01:51:37 6 that was put in the game on purpose and solved an important  
01:51:41 7 problem and, thus, has value that I think is reasonable to  
01:51:44 8 assume is more important and more valuable than an optional  
01:51:49 9 feature. So I then just need to find a comp and adjust it.

01:51:54 10 Q. And why did you use this -- this comparable rate again?

01:51:59 11 A. So the comp here is, again, the same '655 marginal  
01:52:03 12 revenue impact that I concluded for the '655 patent. I  
01:52:06 13 talked to Dr. Akl about the comparability of the '655 to  
01:52:13 14 the '873, and he said that they were technologically  
01:52:16 15 comparable.

01:52:18 16 That sort of gave me comfort to use this as a  
01:52:21 17 comp. I then just need to do an adjustment kind of for  
01:52:25 18 the -- this is not the house on the corner. This is a  
01:52:28 19 house down the block that I need to adjust.

01:52:30 20 Q. So let's talk about those additional adjustments. What  
01:52:33 21 was the first one that you had to make?

01:52:34 22 A. So there's two adjustments here. First, is just that  
01:52:38 23 same usage. Everybody uses -- every player uses the  
01:52:43 24 shooting controls. Only 68.5 percent use the '655 patent.  
01:52:48 25 That's a 1.46 adjustment.

01:52:52 1 The other thing is we're talking about Clash -- or  
01:52:55 2 Brawl Stars here, which that regression of the time versus  
01:52:58 3 spending tells me that the monetization within Brawl Stars  
01:53:05 4 is higher. It takes less time to get the same amount of  
01:53:09 5 increase in revenue.

01:53:10 6 And so adjusting for that higher monetization is a  
01:53:14 7 1.526 factor using the regression results I had.

01:53:19 8 That gets me to a revenue impact for the '873  
01:53:23 9 shooting system of 4.43 percent.

01:53:27 10 Q. And then did you have to make additional adjustments?

01:53:31 11 A. So that's -- that's the benefit that Supercell gets.

01:53:33 12 And the question is, how much of that benefit is reasonable  
01:53:35 13 to pay as a royalty? I make the same commissions and  
01:53:38 14 marketing adjustments to that, and I get to a royalty of  
01:53:42 15 2.4 percent.

01:53:43 16 Q. We'll go back to your chart and fill that in.

01:53:47 17 Dr. Becker, have we now covered everything that  
01:53:51 18 you considered in forming your opinions in this case?

01:53:53 19 A. We've covered the quantitative analysis. There are a  
01:53:56 20 couple of things from that initial list of 15 factors that  
01:53:59 21 I just need to go sort of check off to make sure that  
01:54:02 22 we've -- we've touched on everything.

01:54:03 23 Q. Okay. What do we need to consider? What else do we  
01:54:05 24 need to consider, I should say?

01:54:07 25 A. So the first thing under one of the technical factors,

01:54:11 1 which is generally looked at under Factor 9, is a question  
01:54:14 2 of what we call non-infringing alternatives.

01:54:17 3 In cases where an accused infringer could switch  
01:54:21 4 to something different and still get all the same benefits,  
01:54:25 5 that can impact what they'd be willing to pay. So the  
01:54:30 6 question is, do we have any non-infringing alternatives  
01:54:31 7 here?

01:54:32 8 Q. And do we have any non-infringing alternatives that you  
01:54:34 9 considered?

01:54:35 10 A. There aren't any. I talked to Dr. Akl about this and  
01:54:40 11 about the things that Supercell had proposed as  
01:54:43 12 alternatives. We see with the -- like on the Brawl Stars  
01:54:49 13 shooting, they had an alternative before they put this one  
01:54:53 14 in, and it was a failure in the marketplace.

01:54:55 15 So you always could take something out. The  
01:54:57 16 question is, is it acceptable, and according to Dr. Akl,  
01:55:02 17 none of the alternatives that they've proposed are  
01:55:06 18 technically or -- or qualify as non-infringing  
01:55:11 19 alternatives.

01:55:11 20 Q. Okay. Are there any other factors that we need to  
01:55:14 21 consider?

01:55:14 22 A. So back to the checklist, that -- there are three  
01:55:19 23 factors here that look at licensing considerations.  
01:55:24 24 Sometimes the patents that I'm looking at in a particular  
01:55:26 25 case have been licensed to someone else.

01:55:29 1 It would be like saying, well, this house that I'm  
01:55:31 2 trying to appraise was just sold a year ago, and so we can  
01:55:36 3 just look at that sale and see as a go-by.

01:55:40 4 The question here is, have any of the patents in  
01:55:43 5 this suit been licensed or have any comparable  
01:55:46 6 situations -- exist? And I looked at that, and the answer  
01:55:49 7 is no.

01:55:49 8 Q. And do you know whether Supercell's damages expert  
01:55:56 9 agrees with you with respect to the comparable -- any  
01:56:01 10 comparable licenses?

01:56:01 11 A. I believe he looked at these three factors and  
01:56:04 12 concluded that there were no comparable licenses.

01:56:06 13 Q. Okay. Did you consider whether GREE ever licensed any  
01:56:09 14 of these five U.S. patents that are in this case to anyone?

01:56:13 15 A. They have not licensed these five patents.

01:56:16 16 Q. Okay. Are you aware of the prior settlement agreement  
01:56:20 17 between GREE and Supercell in Japan?

01:56:23 18 A. Yes.

01:56:24 19 Q. Have you reviewed it?

01:56:25 20 A. I did study that agreement, yes.

01:56:26 21 Q. Did you consider whether it was comparable?

01:56:29 22 A. I looked at that question in detail and reached the  
01:56:29 23 conclusion that it is not comparable, for a number of  
01:56:32 24 reasons.

01:56:32 25 Q. And why is it not comparable?

01:56:35 1 A. Well, it's -- there's a long list of reasons why it's  
01:56:38 2 not comparable.

01:56:40 3 One of the most fundamental issues is that the  
01:56:42 4 markets are very different; that licensed patents only in  
01:56:47 5 Japan -- excuse me. And the Japanese market is vastly  
01:56:50 6 different. If we look here just kind of directionally, the  
01:56:54 7 United States market for Supercell is many, many times  
01:56:58 8 larger than the Japanese market.

01:57:00 9 So if -- you know, you can't just look at what was  
01:57:06 10 paid in Japan and have any sense of what would be  
01:57:09 11 reasonable here without at least taking this into account.

01:57:11 12 Q. Are there any other adjustments that you would have to  
01:57:13 13 take into account?

01:57:14 14 A. I looked also at the question of whether just the --  
01:57:17 15 the sort of whole patent damages world in Japan is the same  
01:57:22 16 or comparable to the U.S., and found that -- at least one  
01:57:27 17 study that said that there are dramatic differences in the  
01:57:31 18 way patentholders get compensated for people -- from people  
01:57:35 19 who are infringing in the two jurisdictions. I think I saw  
01:57:40 20 one study that said that U.S. was maybe 10 times higher  
01:57:44 21 than Japan.

01:57:46 22 Q. And is there anything else that we need to consider  
01:57:48 23 with respect to that license?

01:57:51 24 A. Well, the final thing is that that was a settlement.  
01:57:53 25 Remember back to the negotiating table, we had -- this was

01:57:56 1 a situation where I'm supposed to -- you know, the parties  
01:57:59 2 are sitting at the table with no question about the  
01:58:02 3 validity and infringement of the patents. They're willing  
01:58:06 4 to take a license. They're not disputing any of those  
01:58:09 5 things.

01:58:10 6 Quite the opposite is true in Japan. They were in  
01:58:14 7 the midst of a big dispute over these patents and  
01:58:16 8 ultimately decided to compromise and settle.

01:58:19 9 And so that's another element of non-comparability  
01:58:24 10 that you really can't -- given all those factors, I think  
01:58:27 11 you can't look at that Japanese settlement.

01:58:29 12 Q. Are there any other Georgia-Pacific factors that we  
01:58:33 13 need to consider?

01:58:33 14 A. The last category, in terms of -- well, two more. One  
01:58:39 15 is these competitive considerations.

01:58:46 16 In some cases you look at the competitive factors  
01:58:49 17 here, 4 and 5, and find that the two people that I'm trying  
01:58:52 18 to put at that table are head-to-head competitors. I mean,  
01:58:57 19 they're just -- they're just right like that. And that  
01:59:00 20 could have an impact on the royalty rate.

01:59:02 21 There's oftentimes a justification for a much  
01:59:05 22 higher royalty if you're licensing a direct competitor who  
01:59:09 23 is going to then come take sales from you.

01:59:11 24 Here, I looked at the evidence, and I think we  
01:59:13 25 heard Mr. Sheppard say: Largely by the time these

01:59:16 1 negotiations would be happening, GREE was out of the U.S.  
01:59:20 2 market.

01:59:20 3 So I considered it and concluded that this would  
01:59:23 4 not -- it would be neutral with respect to the rate.

01:59:26 5 Q. Okay. And any other factors?

01:59:29 6 A. The last thing is just to outline and sort of define  
01:59:33 7 the nature and scope of the license, how long it would  
01:59:39 8 last, and what, then, would be the outcome of the  
01:59:41 9 negotiation?

01:59:42 10 And, here, the specific elements in terms of  
01:59:45 11 nature and scope are that this would be a non-exclusive  
01:59:49 12 license to practice just these five patents in just the  
01:59:54 13 United States, and that the structure of the royalty there  
01:59:56 14 would be a running royalty.

01:59:58 15 Q. And why a running royalty?

02:00:01 16 A. Well, the -- all the evidence that I saw and that I  
02:00:05 17 considered tells me that the benefits that Supercell gets  
02:00:11 18 come from the extent to which these things are used. And  
02:00:13 19 so the only form of royalty that gives you sort of a pay as  
02:00:19 20 you go, the more you use it, the more you owe, the less you  
02:00:22 21 use it, the less you owe, is a running royalty.

02:00:25 22 The alternative is just to agree to pay a lump  
02:00:28 23 sum, one and done. Doesn't matter how much you use it,  
02:00:32 24 that's the royalty for the license. But that doesn't fit  
02:00:37 25 the economics of these patents.

02:00:38 1 Q. And now that we have these rates, Dr. Becker, did you  
02:00:41 2 calculate what the royalties would be from the date of  
02:00:44 3 first infringement through -- I think the date we have is  
02:00:52 4 July 31st?

02:00:53 5 A. I did.

02:00:55 6 Q. Okay.

02:00:55 7 A. So I took these rates, and I took the revenue data that  
02:01:00 8 Supercell produced. And it's important to note these are  
02:01:04 9 from the first date through July 31st. Even though we're  
02:01:08 10 sitting here today, we only have financial data from  
02:01:10 11 Supercell through July 31st. So these quantifications are  
02:01:14 12 as of July 31st of 2020.

02:01:16 13 For the '594 patent at a .7 percent rate, that  
02:01:21 14 would be \$4,106,296.

02:01:25 15 For the '655 patent, you'll see I have two  
02:01:29 16 numbers, and I can --

02:01:30 17 Q. Let me -- yes, let's -- can you explain why you have  
02:01:34 18 two different dates for the -- both of the Clash Royale  
02:01:37 19 patents?

02:01:37 20 A. Right. So I was asked to do this. I understand from  
02:01:42 21 counsel that GREE has a claim, at least, that it should  
02:01:47 22 receive damages from the date that it sent a letter to  
02:01:52 23 Supercell saying: Hey, we have some patents that you need  
02:01:56 24 to think about.

02:02:01 25 That may or may not be the right date. I think

02:02:04 1 that's something that the jury is going to decide. So I  
02:02:07 2 have to do two things, one quantification from that letter  
02:02:11 3 date or from the date the patent issued.

02:02:13 4 Q. Okay. And is that represented here in these two  
02:02:18 5 columns?

02:02:19 6 A. Yes. So the column from the patent date is from when  
02:02:23 7 the patent issued. That would be for the '655 patent,  
02:02:26 8 \$4,131,448.00. If it's from the letter date, that would be  
02:02:36 9 7,437,809.

02:02:41 10 And, again, same issue with the dates for the  
02:02:44 11 '137/'481, \$7,968,142.00 if it's from the patent date, or  
02:02:54 12 \$10,818,632.00 if it's from the letter date.

02:03:00 13 For Brawl Stars, we don't have that issue. It's  
02:03:02 14 just from the -- from the patent date. Actually, I think  
02:03:05 15 it's the date they put the feature in. And this is  
02:03:07 16 \$2,303,265.00.

02:03:11 17 Q. Thank you, Dr. Becker. I appreciate your time.

02:03:15 18 MS. LUDLAM: Pass the witness.

02:03:16 19 THE COURT: All right. Cross-examination by the  
02:03:18 20 Defendant?

02:03:24 21 MR. DACUS: Thank you, Your Honor. May we pass  
02:03:25 22 out binders while we get ready?

02:03:27 23 THE COURT: You may. You may.

02:03:30 24 MR. DACUS: Thank you, Your Honor.  
02:03:44 25 Your Honor, may I approach?

02:03:46 1 THE COURT: You may.

02:03:49 2 THE WITNESS: Thank you, sir.

02:03:57 3 THE COURT: All right. Mr. Dacus, you may proceed

02:04:01 4 with cross-examination.

02:04:02 5 MR. DACUS: Thank you, Your Honor.

02:04:02 6 CROSS-EXAMINATION

02:04:04 7 BY MR. DACUS:

02:04:04 8 Q. Good afternoon, Dr. Becker.

02:04:05 9 A. Good afternoon.

02:04:06 10 Q. Were you here when the Judge gave his preliminary

02:04:09 11 instructions and for opening statements, sir?

02:04:10 12 A. No.

02:04:11 13 Q. Okay. Have you had an opportunity to read the

02:04:13 14 transcript of the opening statement and the Judge's

02:04:16 15 instructions?

02:04:17 16 A. I -- I reviewed it. I didn't -- I was more looking at

02:04:20 17 Dr. Akl's testimony, so I -- I can't say that I reviewed

02:04:25 18 that in detail.

02:04:26 19 Q. You've testified enough, as you told the jury, that you

02:04:30 20 know that one of the things this jury has to do and one of

02:04:34 21 the things the Judge has told them to do is to assess the

02:04:38 22 credibility of each witness that takes the stand, correct?

02:04:41 23 A. Yes.

02:04:41 24 Q. And in -- specifically for experts, they need to look

02:04:45 25 at the qualifications and experience related to the

02:04:49 1 particular area in which the expert is testifying, true?

02:04:52 2 A. Yes.

02:04:55 3 Q. Okay. Now, as I understand it, you're here telling

02:04:58 4 this jury what you believe a royalty should be based on a

02:05:05 5 negotiation of a patent license, correct?

02:05:07 6 A. Yes.

02:05:08 7 Q. Now, it is true, sir, that in your professional life,

02:05:12 8 you have only negotiated personally two licenses, correct?

02:05:16 9 A. Yes.

02:05:17 10 Q. In the entirety of your career, correct?

02:05:20 11 A. That's correct. In terms of being the person sitting

02:05:23 12 at the table figuratively, negotiating a license, that's

02:05:27 13 correct.

02:05:27 14 Q. And it's also true, sir, that, although you're here

02:05:29 15 telling this jury what these folks would have negotiated

02:05:33 16 for a video game patent license, you personally have never

02:05:36 17 negotiated a video game patent license; isn't that true?

02:05:39 18 A. That's true.

02:05:40 19 Q. You have never worked at any business or company that

02:05:49 20 is involved or was involved in designing or selling video

02:05:53 21 games; isn't that true?

02:05:54 22 A. That's true.

02:05:55 23 Q. Including mobile video games that we're here about;

02:05:58 24 isn't that fair?

02:05:59 25 A. Correct.

02:05:59 1 Q. It's also true, sir, that at the time that you gave  
02:06:06 2 your opinions in this case and you calculated these  
02:06:09 3 damages, you had actually never even played these games;  
02:06:13 4 isn't that true?

02:06:13 5 A. That's true. I hadn't played through the games. I  
02:06:17 6 reviewed lots of videos and things of people playing, but I  
02:06:22 7 hadn't -- I'm not a player of these games myself.

02:06:24 8 Q. It's true, sir, that if -- you do not know how many  
02:06:27 9 other features there are in these games beyond the five  
02:06:32 10 patented features that you're talking about; isn't that  
02:06:35 11 true?

02:06:35 12 A. I wouldn't say that I don't know any of the features.  
02:06:39 13 Certainly, Dr. Neal's survey looked at -- he had control  
02:06:43 14 questions on other features. But in terms of the totality  
02:06:47 15 of features that exist in these games, I don't have a  
02:06:50 16 listing of those.

02:06:51 17 Q. You do have at least enough knowledge to know that  
02:06:53 18 there are hundreds and hundreds, if not thousands, of other  
02:06:59 19 features, correct?

02:06:59 20 A. Yeah, I think depending of how granular you get about a  
02:07:04 21 feature, the color of some little guy's shirt, if you call  
02:07:10 22 that a feature, yeah, there may be thousands of features.

02:07:12 23 Q. And in this case, sir, you made no attempt at all to  
02:07:15 24 try and value those other features; isn't that true?

02:07:17 25 A. That's true. My assignment here was to value these

02:07:21 1 five -- four features.

02:07:23 2 Q. And -- and I want to be clear with you and make sure  
02:07:29 3 that I and the jury understand what you've said as to what  
02:07:32 4 you're going to be here to do today and not do. Does that  
02:07:36 5 sound fair to get that straight?

02:07:36 6 A. Sure.

02:07:36 7 Q. Okay. You are not here to offer any opinion on whether  
02:07:40 8 or not Supercell infringes these patents, correct?

02:07:45 9 A. That is correct.

02:07:45 10 Q. You're not here to give any opinion on whether or not  
02:07:47 11 these patents are valid, true?

02:07:50 12 A. Correct.

02:07:51 13 Q. Candidly, from what you said, when you did your work,  
02:07:54 14 you just assumed that these patents are infringed and that  
02:07:58 15 they are valid, correct?

02:07:59 16 A. Yes. I think it's key to understand that I -- I must  
02:08:02 17 assume that. I mean, the -- it's not that I just chose to  
02:08:05 18 say, well, I'm just going to assume this. I must assume  
02:08:09 19 that as part of my analysis. Every damage expert has to  
02:08:13 20 assume it to make their analysis relevant.

02:08:15 21 Q. And you, of course, understand that Supercell says they  
02:08:19 22 do not use or infringe these patents, correct?

02:08:21 23 A. I understand that's their position.

02:08:22 24 Q. And you understand that Supercell says four of the five  
02:08:25 25 patents are actually invalid?

02:08:27 1 A. I understand that.

02:08:28 2 Q. And if this jury were to find either that the patent is

02:08:32 3 invalid or that Supercell does not use it, there would be

02:08:36 4 no damages, correct?

02:08:37 5 A. Correct.

02:08:38 6 Q. And with all due respect to you, if they find either

02:08:42 7 one of those, they can ignore your testimony, true?

02:08:45 8 A. I think that's fair, yes.

02:08:47 9 Q. Okay. Now, you understand that the jury gets to make

02:08:51 10 that decision on infringement and validity, not me,

02:08:54 11 correct?

02:08:54 12 A. Yes.

02:08:55 13 Q. So I don't know what they're going to find. You

02:08:58 14 understand that?

02:08:58 15 A. Yes.

02:08:59 16 Q. And if they find infringement, then I need to ask you

02:09:02 17 some questions related to damages so that they have all of

02:09:06 18 the evidence in front of them. Does that sound fair?

02:09:08 19 A. That's fair.

02:09:10 20 Q. Okay. Now, one of the things the jury is going to

02:09:14 21 determine is whether or not the form of this license should

02:09:17 22 be either a lump sum or a running royalty, correct?

02:09:23 23 A. I -- I honestly don't know whether they're going to be

02:09:25 24 asked that question.

02:09:27 25 Q. Okay. If they are, you agree that they should base the

02:09:30 1 answer on the evidence, correct?

02:09:31 2 A. Yes.

02:09:32 3 Q. And your proposal is that the jury award a running

02:09:38 4 royalty, a percentage royalty, fair?

02:09:39 5 A. I do -- yes, I think it's fair that the form of the

02:09:43 6 royalty that I use to come up with the damage amounts that

02:09:46 7 I presented is clearly a running royalty.

02:09:49 8 Q. Right. And this percentage that you've multiplied, you

02:09:55 9 multiplied it by revenues or sales; isn't that correct?

02:10:00 10 A. By revenues, yes.

02:10:01 11 Q. Okay. And you multiply -- multiplied it by the

02:10:04 12 revenues for the entire game; isn't that true?

02:10:09 13 A. Yes, the nature of the analytics is to come up with a

02:10:12 14 rate that would apply to the whole game.

02:10:13 15 Q. And you, of course, know, sir, that there's a

02:10:17 16 difference between revenues or sales and profits, correct?

02:10:20 17 A. Oh, absolutely, yes.

02:10:21 18 Q. And so these numbers that the GREE lawyers showed in

02:10:26 19 opening and the numbers that you showed here during your

02:10:29 20 presentation, those -- those were revenue numbers, correct?

02:10:32 21 A. Not exclusively. I had a slide that also showed

02:10:35 22 profits.

02:10:35 23 Q. Ultimately, you multiply your percentage by a revenue

02:10:38 24 number, correct?

02:10:39 25 A. Yes, it's been adjusted for some of the costs, but

02:10:43 1 ultimately the royalty rate goes against gross revenue.

02:10:49 2 Q. You -- you understand, sir, that Supercell says in this

02:10:51 3 case a lump sum is the appropriate form of royalty if the

02:10:56 4 jury decides that issue?

02:10:58 5 A. I -- I understand that that's their position.

02:11:00 6 Q. Okay. And -- and you, of course, know that a lump sum

02:11:03 7 means that you make a one-time payment, and then you have

02:11:08 8 the right to use that patent for as much as you want,

02:11:14 9 correct?

02:11:14 10 A. Right. Both in terms of the quantity and the time. If

02:11:18 11 you make a one-time payment, it would be typically for the

02:11:21 12 life of the patent and that amount of money, whether you

02:11:23 13 made a dollar off of it or a billion dollars off of it.

02:11:27 14 Q. And you agree a lump sum royalty is an appropriate form

02:11:30 15 of royalty, correct?

02:11:31 16 A. It -- it can be. It's one of two typical forms, and it

02:11:35 17 depends on the economics of the case.

02:11:36 18 Q. You yourself have given an opinion from a witness stand

02:11:39 19 many times that a lump sum is appropriate, correct?

02:11:41 20 A. Yes.

02:11:43 21 Q. So you agree that in this case, the jury should make

02:11:47 22 its decision based on the evidence, fair?

02:11:49 23 A. Yes.

02:11:51 24 Q. And as you said earlier, what the jury is attempting to

02:11:54 25 do is determine what these two parties, if they sat down at

02:11:58 1 this hypothetical negotiation table, what they would have  
02:12:00 2 negotiated, fair?

02:12:02 3 A. Fair, under the circumstances that I have to assume are  
02:12:09 4 present at that negotiation.

02:12:10 5 Q. And part of the evidence that the jury should use and,  
02:12:12 6 frankly, you should utilize also is what the parties have  
02:12:17 7 done in the past; isn't that true?

02:12:19 8 A. I only think that would be appropriate if what they've  
02:12:22 9 done in the past is a comparable economic circumstance.

02:12:25 10 Q. Well, we know that GREE and Supercell sat down in  
02:12:27 11 February of 2019 and negotiated a license, correct?

02:12:30 12 A. Yes.

02:12:30 13 Q. Over these Japanese patents, correct?

02:12:32 14 A. You say "these." They -- they were over Japanese  
02:12:35 15 patents.

02:12:36 16 Q. Okay. And that was a lump sum agreement that they came  
02:12:39 17 to?

02:12:39 18 A. It was.

02:12:47 19 Q. You also know from what you've reviewed in this case,  
02:12:51 20 that Supercell actually negotiated a license with a company  
02:12:55 21 called Thompson, correct?

02:12:56 22 A. Yes.

02:12:57 23 Q. They actually negotiated three licenses with Thompson,  
02:12:59 24 fair?

02:13:00 25 A. Yes.

02:13:00 1 Q. And all three of those licenses were lump sum; isn't  
02:13:06 2 that true?

02:13:06 3 A. That's my recollection, yes.

02:13:08 4 Q. All three were for an amount of \$2,500.00, and all  
02:13:12 5 three were lump sum; isn't that a true statement?

02:13:15 6 A. Yes.

02:13:16 7 Q. It is also true, sir, that you are not aware -- are not  
02:13:18 8 aware of any percentage or running royalties that are  
02:13:23 9 customary in this particular industry; isn't that a true  
02:13:26 10 statement?

02:13:26 11 A. That's true.

02:13:27 12 Q. Okay. So the evidence in front of this jury is  
02:13:31 13 Supercell/GREE license was a lump sum, Supercell's license  
02:13:37 14 with Thompson were all lump sum, and you're not aware of  
02:13:40 15 any licenses that are customary in this industry other than  
02:13:45 16 lump sum. Correct?

02:13:46 17 A. Well, I think with respect to that third one, it's that  
02:13:50 18 there are no established royalty rates in the industry.  
02:13:56 19 I'm not aware -- I'm not saying in that that there have  
02:14:01 20 never been licenses in a running royalty form or a lump sum  
02:14:04 21 form in the industry. We just don't know. But there's not  
02:14:07 22 a -- sort of customary rate in the gaming industry that I'm  
02:14:12 23 aware of.

02:14:24 24 Q. Now, I want to ask you some questions not about the  
02:14:27 25 form but about your actual amount; does that sound fair?

02:14:29 1 A. That's fair.

02:14:30 2 Q. You agree, sir, that the law allows for a reasonable

02:14:34 3 royalty, correct?

02:14:34 4 A. I think, technically, it's no less than a reasonable

02:14:37 5 royalty.

02:14:37 6 Q. So, ultimately, the jury needs to determine whether or

02:14:40 7 not your calculation is reasonable; is that fair?

02:14:43 8 A. That is absolutely fair.

02:14:44 9 Q. And GREE has the burden of proof to prove damages;

02:14:51 10 isn't that true?

02:14:51 11 A. Yes.

02:14:52 12 Q. And you would agree with me, sir, that there are some

02:14:55 13 fundamentals of -- or at least principles that you as an

02:15:03 14 expert and the jury as someone determining these decisions

02:15:06 15 should adhere to; you agree with that?

02:15:08 16 A. That's a pretty broad statement. I think there are

02:15:11 17 certainly things that I know I should adhere to. But maybe

02:15:14 18 you could be more specific.

02:15:16 19 Q. Thank you.

02:15:17 20 MR. DACUS: Your Honor, may I have leave to

02:15:19 21 approach the whiteboard?

02:15:20 22 THE COURT: You may.

02:15:21 23 MR. DACUS: Thank you.

02:15:23 24 Q. (By Mr. Dacus) You would agree, Dr. Becker, that

02:15:36 25 Supercell and you, as their representative, should provide

02:15:39 1 to this jury the best evidence you have available to it?

02:15:45 2 You agree with that?

02:15:45 3 A. I think you said Supercell, but I think you meant GREE.

02:15:49 4 Q. I did. And thank you for correcting me.

02:15:52 5 GREE, and you as GREE's representative, should

02:15:55 6 provide the best evidence that you have available to you,

02:15:58 7 correct?

02:15:58 8 A. I think that's fair.

02:16:00 9 Q. And that's -- that's -- is particularly true when

02:16:05 10 you're asking for somewhere between 70 and 20-something

02:16:09 11 million dollars, you agree?

02:16:10 12 A. I think -- I think that's a fair statement whether --

02:16:14 13 regardless of the size of the -- the damages.

02:16:17 14 Q. And as you said to this jury earlier, you should be as

02:16:22 15 precise, you should have as much precision in your

02:16:25 16 calculation as is available to you, isn't that fair?

02:16:27 17 A. I think it's fair that I need to be as reasonable and

02:16:32 18 have that ultimate answer be as consistent with the

02:16:35 19 evidence as I can.

02:16:37 20 Q. You need to be as precise as you can; isn't that true,

02:16:43 21 sir?

02:16:43 22 A. I think there's -- there's an attempt to be as precise

02:16:45 23 as you can, but it's a fairly imprecise process, given the

02:16:49 24 evidence that we have. But I would agree, it needs to be

02:16:51 25 as precise as possible.

02:16:53 1 Q. What you said to the jury just a few minutes ago is one  
02:16:55 2 of the reasons you did this alleged regression analysis is  
02:16:58 3 to provide as much precision as you thought you could;  
02:17:01 4 isn't that true?

02:17:02 5 A. Right. As much as I can. It doesn't mean that you get  
02:17:05 6 all the way to perfection on the precision.

02:17:09 7 Q. And you agree, sir, that you, as someone on behalf of  
02:17:13 8 GREE, you should provide all the evidence that you have;  
02:17:15 9 you agree with that, correct?

02:17:16 10 A. I think I have a duty to present relevant evidence.  
02:17:21 11 Clearly, in an hour, I can't present everything that I  
02:17:26 12 looked at.

02:17:26 13 Q. You should prevent -- you should present all relevant  
02:17:30 14 and material evidence; you agree with that?

02:17:32 15 A. Everything that I felt was relevant to the -- to -- to  
02:17:36 16 satisfy -- or that I felt was relevant in reaching my  
02:17:39 17 conclusion.

02:17:40 18 Q. You know, sir, that experts in your situation often  
02:17:50 19 rely on what's called the market approach, correct?

02:17:52 20 A. Yes.

02:17:53 21 Q. And that market approach is essentially relying on  
02:17:58 22 royalties paid in licenses that involve the same patented  
02:18:03 23 technology or similar technology; isn't that true?

02:18:05 24 A. Yes.

02:18:05 25 Q. And this market approach is sort of subsumed or

02:18:12 1 encompassed in those Georgia-Pacific factors that you  
02:18:15 2 pointed the jury to, correct?

02:18:16 3 A. Yes.

02:18:16 4 Q. And, specifically, they're in Georgia-Pacific Factor

02:18:19 5 No. 1 and No. 2?

02:18:20 6 A. Yes.

02:18:22 7 Q. And I know you used the house analogy. But the reason  
02:18:27 8 people look at licenses for the patented technology is  
02:18:33 9 similar to purchasing a house; isn't that correct?

02:18:36 10 A. I -- I've used that analogy before, yes.

02:18:39 11 Q. In other words, if you're going to go buy a house, you  
02:18:42 12 want to know first and foremost has this house been sold in  
02:18:47 13 the recent past and for how much, correct?

02:18:50 14 A. Yes.

02:18:50 15 Q. And, as you said to the jury, if that specific house  
02:18:53 16 has not been sold, then you might look to comparables to  
02:18:56 17 try to make an assessment of what that particular house is  
02:18:59 18 worth; isn't that correct?

02:19:00 19 A. That's correct.

02:19:01 20 Q. And that's basically behind -- the rationale behind  
02:19:07 21 Georgia-Pacific Factor 1 and 2, true?

02:19:09 22 A. It is.

02:19:09 23 Q. Now, it is true, sir, that the very first place that  
02:19:17 24 you as an expert always go is to see if that patented  
02:19:21 25 technology in suit has been licensed; isn't that correct?

02:19:24 1 A. Yes. I mean, if it's -- if it's not the very first  
02:19:28 2 question, it's one of the first questions I always ask.  
02:19:31 3 Q. And you agree it should be the first question you ask,  
02:19:34 4 correct?  
02:19:34 5 A. Yes.  
02:19:34 6 Q. And the reason that that's the first question is  
02:19:38 7 because if there is, in fact, a license to the patented  
02:19:42 8 technology at issue, then we don't need to do some  
02:19:45 9 theoretical calculation or survey if the marketplace has  
02:19:50 10 already spoken as to the value of that technology, correct?  
02:19:52 11 A. I disagree with that question in terms of if there is a  
02:19:57 12 license. It needs to be a comparable license.  
02:20:00 13 Q. Okay. So if there is a license related to the patented  
02:20:04 14 technology at issue, you agree that we do not need to look  
02:20:08 15 at some theoretical calculation or survey, correct?  
02:20:13 16 A. No, I disagree with that question. I mean, you --  
02:20:18 17 again, you're just saying if there is a license. You've  
02:20:20 18 only included maybe a little bit of the comparability  
02:20:25 19 analysis in your question. It needs to be technologically  
02:20:28 20 and economically comparable before you use it.  
02:20:32 21 Just because it's a house, doesn't make it a comp.  
02:20:36 22 If it's of a fundamentally different nature in a different  
02:20:41 23 city, maybe even in a different country, I don't know many  
02:20:45 24 appraisers who would use that as a comp in valuing a house  
02:20:48 25 here in Marshall, Texas.

02:20:49 1 Q. What if it's the same house, should we look for that  
02:20:52 2 and determine what the value is?

02:20:54 3 A. If -- if it's the same house and the economics of the  
02:20:57 4 transaction were comparable, yes, I think you could use it.

02:21:01 5 Q. So, here, this license between GREE and Supercell  
02:21:06 6 related to the Japanese patents, actually licensed 1,079 of  
02:21:15 7 GREE's patents, correct?

02:21:16 8 A. Ultimately, yes, that was included -- something of that  
02:21:18 9 order. I don't have an exact count.

02:21:23 10 MR. DACUS: Can we pull up, Mr. Smith,  
02:21:27 11 Dr. Becker's report at Page 33, Paragraph 93, sub 1?

02:21:41 12 Q. (By Mr. Dacus) While we're doing this, Dr. Becker, in  
02:21:45 13 these cases you actually submit a written report to the  
02:21:48 14 Court and to us, relating to your findings and opinions in  
02:21:50 15 this case, correct?

02:21:51 16 A. I do, yes.

02:21:52 17 Q. And you sign that report to affirm that what's  
02:21:55 18 contained in the report is true, correct?

02:21:57 19 A. Yes.

02:21:58 20 Q. And you did that in this case?

02:22:00 21 A. Yes.

02:22:00 22 Q. And this is part of your report that you submitted in  
02:22:03 23 this case, true?

02:22:04 24 A. Yes.

02:22:04 25 Q. And you see there in Paragraph 93, sub 1, it says:

02:22:13 1 GREE granted Supercell a license to the use of 1,079  
02:22:18 2 Japanese patents and patent applications.

02:22:20 3 That's a true statement, correct?

02:22:22 4 A. It is.

02:22:23 5 MR. DACUS: All right. Thank you, Mr. Smith.

02:22:25 6 Q. (By Mr. Dacus) And it's true that GREE granted to  
02:22:28 7 Supercell the right to those patents through the expiration  
02:22:33 8 of those patents' life, correct?

02:22:34 9 A. Correct.

02:22:35 10 Q. And in many instances, you know, sir, that that would  
02:22:40 11 have been far more than 10 years into the future for many  
02:22:43 12 of these patents, correct?

02:22:45 13 A. Yes.

02:22:45 14 Q. And Supercell paid a lump-sum amount, correct?

02:22:48 15 A. They did.

02:22:52 16 Q. And they got the right to use those patents as much as  
02:22:55 17 they want; isn't that fair?

02:22:57 18 A. Yes.

02:22:57 19 Q. So let's be specific here -- and, by the way, the  
02:23:00 20 amount of the license was for \$4.5 million, correct?

02:23:04 21 A. Correct.

02:23:04 22 Q. So for \$4.5 million, Supercell had the right to use  
02:23:09 23 1,079 patents for as much as they want through the life of  
02:23:13 24 the patents, correct?

02:23:15 25 A. Correct.

02:23:15 1 Q. And -- and so that we put a fine point on this, it's  
02:23:18 2 true, sir, that if GREE -- I mean, if Supercell had sales  
02:23:22 3 in Japan after the date of the license that were 100 times  
02:23:29 4 bigger than what they had sell -- sold before the license,  
02:23:34 5 they didn't have to pay a penny more, correct?

02:23:37 6 A. Correct.

02:23:38 7 Q. If they had sales that were 1,000 times more, they  
02:23:41 8 never had to pay a penny more --

02:23:43 9 A. That's correct.

02:23:44 10 Q. -- correct? And we can keep going, but if Supercell  
02:23:49 11 had sales in Japan that were one trillion times what they  
02:23:53 12 had been in the past, they still didn't have to pay a penny  
02:23:56 13 more than \$4.5 million; isn't that right?

02:24:01 14 A. That's true.

02:24:02 15 Q. It's also true, sir, that within those 1,079 patents,  
02:24:07 16 it included the very same patented technology that we're  
02:24:11 17 talking about in this case; isn't that true?

02:24:12 18 A. I think some of it was the -- what we call the Japanese  
02:24:17 19 counterparts to some of these patents. I don't know if it  
02:24:20 20 was every one of them. It might have been. But,  
02:24:23 21 certainly, some of the technology in those thousand-odd  
02:24:27 22 Japanese patents is similar, if not identical, to this  
02:24:29 23 technology.

02:24:31 24 Q. Did you read GREE's opening statement that it gave in  
02:24:35 25 this case?

02:24:36 1 A. No.

02:24:39 2 MR. DACUS: Can -- can we pull up from GREE's  
02:24:42 3 opening statement, 204, 9 through 17, Mr. Smith?

02:25:10 4 Q. (By Mr. Dacus) Do you see here, sir -- this is from  
02:25:13 5 GREE's opening statement.

02:25:13 6 A. I see that, yeah.

02:25:14 7 Q. That second paragraph says: But Supercell has refused  
02:25:18 8 to pay to use the same types of inventions in the United  
02:25:22 9 States.

02:25:22 10 Do you see that?

02:25:23 11 A. Yes.

02:25:23 12 MR. DACUS: We can take that down, Mr. Smith.

02:25:26 13 Q. (By Mr. Dacus) So at least GREE's counsel has told  
02:25:28 14 this jury that the Japanese license included the same  
02:25:32 15 technologies that are involved in this case, correct?

02:25:33 16 A. The same type of technology, yes.

02:25:36 17 Q. As you said, the Japanese counterparts?

02:25:39 18 A. Yes.

02:25:40 19 Q. Japanese equivalents, correct?

02:25:43 20 A. Yes, to at least some of the patents.

02:25:45 21 Q. So this jury is not here to decide the value of 1,079  
02:25:50 22 patents; they're only here to decide the value of five,  
02:25:53 23 correct?

02:25:53 24 A. Correct.

02:25:53 25 Q. But we know what was paid for 1,074 more patents

02:25:59 1 than -- than just these five, correct?

02:26:05 2 A. Yes.

02:26:06 3 Q. Now, within that license, sir, you know that Supercell  
02:26:19 4 did not agree that it used those particular patents,  
02:26:26 5 correct, the Japanese patents?

02:26:28 6 A. I'm not sure I understand the question.

02:26:31 7 Q. Let's do this.

02:26:32 8 MR. DACUS: Mr. Smith, can you pull up the trial  
02:26:35 9 transcript from September 10th P.M., 204, 6 through 11,  
02:26:52 10 please?

02:26:52 11 Q. (By Mr. Dacus) This is also from GREE's opening  
02:26:54 12 statement, and it says: And we're here because Supercell  
02:26:57 13 simply won't take responsibility for its actions.  
02:27:00 14 Supercell knows that it is using GREE's patented  
02:27:04 15 technology.

02:27:06 16 Why do I say it knows? Because Supercell agreed  
02:27:10 17 to a license with GREE to use GREE's patents in Japan.

02:27:13 18 Do you see that, sir?

02:27:14 19 A. I see that.

02:27:15 20 MR. DACUS: Take that down, Mr. Smith.

02:27:17 21 Q. (By Mr. Dacus) Now, that's GREE's lawyer saying to  
02:27:23 22 this jury that Supercell has admitted that it used this  
02:27:25 23 patented technology because it took a license, correct?

02:27:27 24 A. I mean, the words will speak for themselves. I -- he's  
02:27:32 25 saying they agreed to take a license in Japan.

02:27:35 1 Q. You know, sir, from looking at this license and  
02:27:38 2 reviewing it, that Supercell in no way agreed that it used  
02:27:44 3 those patents or that patented technology, correct?

02:27:46 4 A. I don't remember the exact language, but I'm sure  
02:27:49 5 there's a disclaimer in there that says Supercell is not  
02:27:54 6 admitting that it is infringing any of the patents.

02:27:56 7 Q. Well, there's more than that in this license. There's  
02:28:00 8 an express representation and a promise by both parties  
02:28:04 9 that neither would represent that either had done a  
02:28:07 10 wrongdoing; isn't that correct?

02:28:08 11 A. I -- you'd need to point me to it. I don't recall  
02:28:11 12 that.

02:28:11 13 MR. DACUS: Mr. Smith, can you pull up the -- it's  
02:28:18 14 PTX-480, and go to Page 9 and Paragraph 5.7, please?

02:28:27 15 Q. (By Mr. Dacus) This is the Supercell/GREE Japanese  
02:28:31 16 license, correct, sir?

02:28:33 17 A. This -- I do recognize this as the license from  
02:28:36 18 February of 2019.

02:28:38 19 MR. DACUS: And can you go to Page 9, Mr. Smith?  
02:28:41 20 And can you blow up Paragraph 5.7?

02:28:45 21 Q. (By Mr. Dacus) So Paragraph 5.7, Dr. Becker, says: No  
02:28:54 22 Admission of Liability.

02:28:57 23 Correct? You see that?

02:28:58 24 A. I do.

02:28:59 25 Q. It says: The parties acknowledge -- and then I'm going

02:29:03 1 to read (b) -- as in boy -- neither this agreement nor  
02:29:08 2 payment of the settlement payment or other transactions  
02:29:11 3 undertaken pursuant thereto constitutes or shall be  
02:29:14 4 construed as an admission of liability by Supercell or GREE  
02:29:19 5 or as an admission that either party engaged in any  
02:29:23 6 wrongful, tortious, or unlawful activity.

02:29:27 7 And then it says: Nor shall they be so  
02:29:30 8 characterized by either party.

02:29:31 9 Do you see that, sir?

02:29:32 10 A. I do.

02:29:33 11 Q. So Supercell -- well, more importantly, GREE promised  
02:29:39 12 in this agreement that they would not characterize to  
02:29:42 13 anyone that Supercell had done anything wrong; isn't that  
02:29:46 14 true?

02:29:46 15 A. I -- that seems to be what this says. But I -- I --  
02:29:53 16 I'm not a lawyer -- I don't know what -- what this -- what  
02:29:55 17 the legal implication of this is.

02:29:57 18 Q. You would agree with me, sir, that to the extent that  
02:30:00 19 GREE's lawyer left the impression with this jury that  
02:30:04 20 Supercell had admitted some sort of wrongdoing by taking a  
02:30:07 21 license, that's absolutely contrary to what this agreement  
02:30:11 22 says; isn't that true?

02:30:14 23 A. I don't have an opinion about that.

02:30:16 24 Q. You do agree, sir, just because you can read the  
02:30:20 25 English language, that GREE promised that they would not

02:30:23 1 characterize to any -- that any party infringed or did  
02:30:29 2 anything wrong; isn't that true?

02:30:31 3 A. Well, there -- there are some promises in here that  
02:30:33 4 they -- about characterizing any wrongful, tortious, or  
02:30:40 5 unlawful activity. But beyond that, I don't really know  
02:30:43 6 what that -- the legal implications of that are.

02:30:46 7 Q. You also know that in this agreement, GREE made  
02:30:49 8 Supercell promise that it would not challenge the validity  
02:30:52 9 of these patents in Japan, correct?

02:30:54 10 A. Yes.

02:30:56 11 MR. DACUS: We can take that down, Mr. Smith.

02:30:58 12 Q. (By Mr. Dacus) And -- and let's make sure we're clear  
02:31:01 13 on the scenario of this license in Japan, because you  
02:31:03 14 mentioned economic circumstances. Can I ask you some  
02:31:06 15 questions on that, sir?

02:31:07 16 A. Sure.

02:31:08 17 Q. Now, it's true that Japan is GREE's home turf or  
02:31:14 18 homeland, correct?

02:31:15 19 A. Yes.

02:31:15 20 Q. GREE is very successful in Japan, correct?

02:31:17 21 A. Yes.

02:31:18 22 Q. They have this big social networking web media  
02:31:24 23 platform, correct?

02:31:24 24 A. Yes.

02:31:25 25 Q. Something similar to Facebook?

02:31:28 1 A. Yes.

02:31:28 2 Q. And I think Mr. Araki testified that they're actually

02:31:31 3 traded on the Tokyo stock exchange, true?

02:31:34 4 A. Yes, it's a publicly-traded company in Japan.

02:31:39 5 Q. That's equivalent of the New York Stock Exchange?

02:31:42 6 A. Yes.

02:31:43 7 Q. And I think he said they have some 30 million users,

02:31:48 8 correct?

02:31:48 9 A. Yes.

02:31:48 10 Q. And Mr. Araki said that they actually -- that GREE

02:31:51 11 filed a lawsuit against Supercell in Japan. Were you here

02:31:56 12 for that testimony?

02:31:57 13 A. I was not here for that, but I am aware of the

02:31:59 14 infringement action that was filed in Japan.

02:32:01 15 Q. Well -- and that's what I want to ask you about. It

02:32:03 16 wasn't an infringement action, was it, sir?

02:32:05 17 A. There were multiple.

02:32:06 18 Q. 39, correct?

02:32:09 19 A. Yes.

02:32:10 20 Q. They filed 39 lawsuits against Supercell in Japan in

02:32:18 21 their homeland, correct?

02:32:19 22 A. Yes.

02:32:19 23 Q. You understand, sir, there is no jury trial in Japan,

02:32:23 24 correct?

02:32:23 25 A. Yes, I understand that.

02:32:25 1 Q. You also know that GREE was threatening Supercell with  
02:32:30 2 an injunction? You understand that?

02:32:33 3 A. Yes, that's typical in a case like that, that one of  
02:32:37 4 the remedies is to enjoin the other party if they're found  
02:32:42 5 to infringe, from continuing to do that.

02:32:44 6 Q. So what that means is GREE was threatening Supercell in  
02:32:48 7 Japan, in its homeland, that if any technical part of  
02:32:51 8 Supercell's games were found to infringe, Supercell would  
02:32:56 9 have to take the game completely off the market; isn't that  
02:32:59 10 true?

02:32:59 11 A. I don't know the extent to which there would have to be  
02:33:02 12 a finding of infringement before an injunction would kick  
02:33:05 13 in, but, certainly that's one of the remedies they were  
02:33:08 14 asking for. And if they met the burden of getting that  
02:33:11 15 remedy, that's what would happen.

02:33:13 16 Q. And you also know, sir, that GREE asked Supercell --  
02:33:16 17 demanded that Supercell take -- take a license to these  
02:33:20 18 U.S. patents during those negotiations; isn't that true?

02:33:22 19 A. I don't recall that specifically, no. I know that  
02:33:27 20 ultimately they didn't. But I don't -- I don't know that.

02:33:30 21 Q. Of course, in the United States, Supercell gets a jury  
02:33:36 22 trial, correct?

02:33:37 23 A. They do.

02:33:38 24 Q. At the end of the day, sir, in this license, GREE, who  
02:33:44 25 is the same GREE that sits down at this hypothetical

02:33:50 1 negotiation, they negotiated for a price of \$4.5 million  
02:33:55 2 for Supercell to have unlimited rights to 1,079 patents,  
02:34:00 3 correct?  
02:34:00 4 A. Correct.  
02:34:00 5 Q. And this jury is here to decide the number for five,  
02:34:16 6 true?  
02:34:17 7 A. Yes.  
02:34:17 8 Q. Now, with respect to your calculation of these  
02:34:22 9 percentages, I want to talk to you about how you -- some of  
02:34:25 10 the details related to that; is that fair?  
02:34:27 11 A. Yes.  
02:34:27 12 Q. The basis of your calculation, as I understood it, was  
02:34:38 13 the heading that you had on one of these slides that said:  
02:34:41 14 Time in game equals revenue or money.  
02:34:44 15 Correct?  
02:34:44 16 A. That's one of the elements of the valuation that I do  
02:34:50 17 for the two optional patents -- or two optional features.  
02:34:56 18 Q. I mean, ultimately, that -- that's the basis of your  
02:35:02 19 calculation is that additional time on these games created  
02:35:08 20 by these patented features leads to a benefit or revenue to  
02:35:12 21 Supercell? At a high level, that's -- that's your  
02:35:15 22 calculation?  
02:35:16 23 A. At a high level, that is the calculation that I did to  
02:35:18 24 come up with a value for the two optional features. And  
02:35:25 25 then I'm using one of those as a comparable to value the

02:35:29 1 other -- the core features.

02:35:31 2 Q. Let's -- let's go through that.

02:35:36 3 Now, each patented feature for the '655, the '594,  
02:35:39 4 the '873, '137, and '481, those are all different features,  
02:35:45 5 are they not?

02:35:46 6 A. Yes.

02:35:50 7 Q. And we know they're different because there's a  
02:35:52 8 different patent for each one; isn't that fair?

02:35:55 9 A. I think it's fair that -- I mean, you've got five  
02:36:02 10 columns there. I -- I grouped the '137 and '481 together.

02:36:06 11 Q. Okay.

02:36:06 12 A. But I think they're -- certainly there are four  
02:36:09 13 distinct features spread across the five patents.

02:36:12 14 Q. And in theory, what Dr. Neal did, the survey expert, he  
02:36:16 15 did a survey to determine whether or not players would play  
02:36:20 16 these games more or less if the patented feature was  
02:36:23 17 removed; isn't that true?

02:36:24 18 A. For two of the features, yes.

02:36:26 19 Q. For two of the features. And that -- that's what I  
02:36:29 20 want to talk about.

02:36:30 21 MR. DACUS: May I approach the whiteboard,  
02:36:33 22 Your Honor?

02:36:33 23 THE COURT: You may.

02:36:34 24 MR. DACUS: Thank you.

02:36:35 25 Q. (By Mr. Dacus) So the survey, Dr. Becker, was done for

02:36:47 1 the '655 patent and the '594 patent, correct?

02:36:51 2 A. Yes.

02:36:53 3 Q. And only for those two patents; isn't that true?

02:36:56 4 A. Absolutely, yes.

02:36:56 5 Q. And at the end of the day, there was no survey done for

02:37:03 6 the '137, '481, and '873, correct?

02:37:07 7 A. Correct.

02:37:09 8 Q. And the '655, that feature relates to a video game,

02:37:16 9 that's a fair statement, correct?

02:37:17 10 A. You used -- I think you're dating yourself and myself

02:37:22 11 to call it a video game. It's a mobile game.

02:37:25 12 Q. A mobile video game, is that fair, or just a mobile

02:37:29 13 game?

02:37:30 14 A. Mobile game. I mean, there's no video. Video is like

02:37:33 15 an old-styled TV.

02:37:35 16 Q. Now, the '655, at least in theory, the purpose was to

02:37:43 17 increase player time -- or player engagement on the game;

02:37:47 18 isn't that true?

02:37:48 19 A. It is a player engagement, player-enjoyment focused

02:37:55 20 game, yes -- I mean, focused feature.

02:37:56 21 Q. So that -- that's true not only for the '655 but also

02:38:02 22 for the '594, isn't that correct, that it relates to a

02:38:05 23 mobile game and the purpose is to increase the time or

02:38:11 24 engagement? Isn't that correct?

02:38:13 25 A. Quality -- we'll see -- we talk about quality of life,

02:38:17 1 its engagement. Generally, I think if you use the term  
02:38:20 2 "engagement," you'll -- it will be the appropriate thing.

02:38:28 3 Q. Now, if I understood you correctly earlier, sir, you  
02:38:31 4 said that -- that these two features you consider somewhat  
02:38:34 5 minor in relation to the other three?

02:38:38 6 A. Well, they're optional, and, thus, they're -- they're  
02:38:42 7 certainly used less, and I think the evidence that I  
02:38:44 8 would -- that I reviewed suggests that they're less  
02:38:49 9 important.

02:38:49 10 Q. So you did a survey for the two features that are less  
02:38:53 11 important, and you did not do a survey for the three that  
02:38:56 12 are, as you said, core features and key to the games; do I  
02:38:59 13 have that correct?

02:39:00 14 A. That's correct. I didn't -- just to be clear, I didn't  
02:39:03 15 do the survey. Dr. Neal did.

02:39:04 16 Q. You understand, sir, that none of my questions to you  
02:39:07 17 am I being personally critical of you?

02:39:09 18 A. No, no, I understand that.

02:39:11 19 Q. Okay. You understand -- well, let me ask this  
02:39:16 20 question, sir: You do not know why a survey was not done  
02:39:19 21 for the '137, '481, and '873, do you?

02:39:28 22 A. I don't know what decision process Dr. Neal used. I  
02:39:31 23 can tell you economically, I would not have attempted to  
02:39:35 24 survey the '137/'481, for example, as an economic matter.  
02:39:41 25 But I -- I don't know what -- in the discussion that

02:39:45 1 Dr. Neal had, I did not make that decision for him.

02:39:49 2 Q. Who did? The lawyers?

02:39:52 3 A. I -- I don't know. I wasn't involved in the process of

02:39:55 4 designing or implementing the survey.

02:39:57 5 Q. You also know, so that we're clear, sir, that the

02:40:04 6 survey that was done by Dr. Neal did not actually ask how

02:40:09 7 much amount of time, either more or less, these

02:40:11 8 participants would play these games if the feature was

02:40:14 9 removed, correct?

02:40:17 10 A. It asked percentage change in time. It did not ask for

02:40:26 11 an absolute number of minutes or hours.

02:40:30 12 Q. Correct. And so if someone played this game for one

02:40:33 13 minute, all this survey told you was whether or not they

02:40:37 14 were increasing their time by a certain percentage,

02:40:40 15 correct?

02:40:40 16 A. Right. That's true. And that's what I needed for my

02:40:43 17 analysis was a percentage change, not absolute minutes.

02:40:46 18 Q. Is there anything, to your knowledge, that would have

02:40:49 19 prevented in an analysis where we're trying to determine

02:40:52 20 how much more people play -- how much less people play

02:40:58 21 these games if the feature was removed, is there anything

02:41:01 22 that would have prevented from simply asking that direct

02:41:04 23 question?

02:41:04 24 A. I'm not a survey expert, so I have no idea whether

02:41:11 25 that's something that would be valid to ask.

02:41:13 1 Q. What you ultimately did, sir, as you explained, is you  
02:41:19 2 took the results for the '655 patent and you applied to the  
02:41:23 3 '137, '481, and '873, correct?

02:41:29 4 A. When you say "applied," I used the '655 as a comp -- as  
02:41:34 5 a comparable data point from a valuation standpoint to then  
02:41:39 6 assess the value of the '137/'481 combined and the '873.

02:41:48 7 MR. DACUS: Your Honor, may I approach?

02:41:50 8 THE COURT: You may.

02:41:51 9 MR. DACUS: Thank you.

02:41:51 10 Q. (By Mr. Dacus) What you did, Dr. Becker, is you used  
02:41:59 11 the royalty rate that you gathered from the survey  
02:42:06 12 information as a starting point for the '137, '481, and  
02:42:13 13 '873, correct?

02:42:14 14 A. That's -- I think that's a fair statement. What I  
02:42:17 15 ultimately concluded as the royalty rate for those first  
02:42:21 16 two patents, I then selected out of the two a comp and used  
02:42:26 17 it to value the other two.

02:42:28 18 Q. So the royalty rate that you used based on the survey  
02:42:38 19 from the '655 was 1.1 percent, that's what you just showed  
02:42:42 20 the jury, correct?

02:42:43 21 A. Yes.

02:42:45 22 Q. And for the '594, it was .7 percent, correct?

02:42:54 23 A. 0.7, yes.

02:42:59 24 Q. And you used this 1.1 percent as a starting point for  
02:43:03 25 the '137 and '481 patents, correct?

02:43:08 1 A. Combined, yes.

02:43:10 2 Q. And you ultimately concluded that the royalty rate for

02:43:12 3 those two was actually 1.6 percent; isn't that correct?

02:43:16 4 A. Correct.

02:43:17 5 Q. And then for the '873 you concluded that the royalty

02:43:26 6 rate is actually 2.4 percent, correct?

02:43:29 7 A. Correct.

02:43:29 8 Q. It is true, sir, that it would have been absolutely

02:43:44 9 economically appropriate to use the royalty rate from this

02:43:52 10 '594 patent to calculate the '137, '481, and '873, correct?

02:43:58 11 A. In terms of absolutely appropriate, I certainly had the

02:44:03 12 '594 as a potential starting point for those other two. I

02:44:07 13 think with respect to the '137/'481, there's -- you know,

02:44:12 14 we're talking about a comp -- selecting a comp from within

02:44:16 15 the same game, which then means that I have fewer

02:44:21 16 adjustments to make.

02:44:22 17 So I wouldn't agree that it's absolutely okay, but

02:44:25 18 certainly within the realm of possible things that I could

02:44:28 19 have done; those are both potential comps.

02:44:31 20 Q. I mean, the only reason, sir, that you felt comfortable

02:44:35 21 using the '655 as a comp for the '137, '481, and '873 was

02:44:40 22 because all of them related to mobile games, and they

02:44:45 23 were -- the purpose of them was to increase player time,

02:44:49 24 correct?

02:44:49 25 A. Increase player engagement.

02:44:51 1 That's not the only consideration that I made in  
02:44:55 2 selecting the comps, but that is one dimension of what  
02:45:02 3 makes them available comps.

02:45:03 4 Q. And you agree that the '594 has both of those same  
02:45:06 5 attributes; that is, it's a mobile game, and the purpose is  
02:45:09 6 to increase player engagement or time, correct?

02:45:12 7 A. Yes.

02:45:17 8 Q. From this survey, sir, you know that features that are  
02:45:23 9 in a mobile game and whose purpose is to increase player  
02:45:28 10 engagement or time, can have very different results when it  
02:45:33 11 comes to their effect on revenue, correct?

02:45:35 12 A. I think with -- yes, some of them could. Others -- I  
02:45:41 13 think the effect is more binary if you take -- if you take  
02:45:46 14 Elixir out or you take the shooting controls out of a game,  
02:45:50 15 you don't have the game.

02:45:51 16 So I think with respect to the core patents, I --  
02:45:57 17 I disagree with that. But with respect to ones that are  
02:46:00 18 what I call optional features, yes, they all could have  
02:46:04 19 different impacts.

02:46:06 20 MR. DACUS: Can we pull up Dr. Becker's report,  
02:46:09 21 the 070 report, Exhibit 4A, please, Mr. Smith?

02:46:18 22 Q. (By Mr. Dacus) You -- you do agree, while we're  
02:46:21 23 pulling that up, sir, that what the survey showed is that  
02:46:24 24 the '594 feature is less important than the '655 feature,  
02:46:32 25 correct? I'm not referring to what's on the screen, sir.

02:46:34 1 A. Oh, oh, oh, yeah. I would have to look and see what  
02:46:37 2 the -- the -- what the survey results showed.

02:46:42 3 Q. Well, you know that what they showed is, according to  
02:46:46 4 your calculation, that the royalty for the '594 should be  
02:46:51 5 .7 percent and for the '655 should be 1.1 percent, correct?

02:46:55 6 A. Yes. Definitely the royalty rate is lower, but that's  
02:47:01 7 the result of a number of considerations other than just  
02:47:03 8 the survey.

02:47:04 9 Q. At the end of the day, sir, you know that the surveys  
02:47:08 10 indicate that the '594 patent is less important than the  
02:47:11 11 '655, correct?

02:47:12 12 A. Again, I'd need to refer to the survey results to know  
02:47:18 13 if with respect to the survey, it says it's less important.

02:47:22 14 MR. DACUS: Can we pull up Dr. Becker's deposition  
02:47:24 15 at Page 68, Line 22 through 69, Line 4?

02:47:33 16 Q. (By Mr. Dacus) While we're doing that, Dr. Becker, you  
02:47:35 17 gave a deposition in this case, correct?

02:47:37 18 A. Yes.

02:47:37 19 Q. You were sworn under oath in that deposition, correct?

02:47:40 20 A. Yes.

02:47:40 21 Q. You gave that deposition after you gave us your report  
02:47:43 22 in this case, correct?

02:47:45 23 A. Correct.

02:47:45 24 Q. And you were sworn under oath just like you are today,  
02:47:49 25 fair?

02:47:50 1 A. Fair.

02:47:52 2 Q. If we look at 68:22, the question to you was: You  
02:47:58 3 testified a little bit earlier on the same subject. You  
02:48:01 4 said, when I look at these overall results for the '594  
02:48:04 5 patent, we see kind of a systemic result that the accused  
02:48:07 6 feature in the '594 patent is sort of less, appears to be  
02:48:11 7 the less important overall than the feature for the '655  
02:48:15 8 patent, Clash Royale, correct?

02:48:17 9 And your answer was: Yes, that was my testimony.

02:48:21 10 Correct?

02:48:22 11 A. Yes.

02:48:22 12 Q. That was truthful testimony, correct?

02:48:24 13 A. Yes.

02:48:24 14 Q. So does that remind you that from the survey, you knew  
02:48:28 15 that the '594 was less important than the '655?

02:48:30 16 A. That seems to indicate that in the deposition I was  
02:48:33 17 looking at the survey results, and it looked like there was  
02:48:36 18 a systematic lower importance for the '594.

02:48:43 19 MR. DACUS: We can take that down, Mr. Smith.

02:48:46 20 And if you would pull back up Exhibit 4A from the  
02:48:55 21 070 report.

02:48:55 22 Q. (By Mr. Dacus) Now, this is from your report, correct,  
02:48:57 23 sir?

02:48:57 24 A. Yes.

02:48:57 25 Q. And this is showing that you multiplied that 2.4

02:49:02 1 percent number by the accused revenues for Brawl Stars,  
02:49:05 2 correct?  
02:49:05 3 A. Yes.  
02:49:05 4 Q. Now, you would agree, sir, that the 2.4 percent is the  
02:49:08 5 highest percentage royalty that you used, correct?  
02:49:12 6 A. It is.  
02:49:12 7 Q. And you use -- you came to that number without a survey  
02:49:19 8 on this specific '873 feature, correct?  
02:49:24 9 A. Correct.  
02:49:24 10 Q. Indeed, no survey was even done on the Brawl Stars game  
02:49:29 11 to which this feature applies, correct?  
02:49:31 12 A. That's true.  
02:49:32 13 Q. So the only survey information we have of the '655 and  
02:49:38 14 '594, you more than tripled the '594 value without a shred  
02:49:45 15 of additional survey evidence, correct?  
02:49:47 16 A. Well, I didn't -- I -- I ended up at a rate that  
02:49:51 17 mathematically is about three times the '594. That --  
02:49:56 18 that's a mathematical truth. The question implied that I  
02:50:01 19 used the '594 to get there, but I didn't.  
02:50:03 20 Q. Yes, sir. You understand that you certainly could have  
02:50:06 21 used the .7 percent just as equally valid as using the 1.1  
02:50:12 22 as a starting point, correct?  
02:50:14 23 A. With respect to Brawl Stars, I -- I could have started  
02:50:16 24 there. That the -- the adjustments would have been  
02:50:20 25 different. It -- it wouldn't follow that the lower amount

02:50:26 1 for the '594 would mean that you end up with kind of the  
02:50:31 2 similar factor over in the '873.

02:50:38 3 Q. At end of the day, sir, we do not know -- this jury  
02:50:42 4 does not know and you do not know what the survey would  
02:50:44 5 have shown for the Brawl Stars game and the '873 patented  
02:50:47 6 feature, correct?

02:50:47 7 A. It -- if some survey had been fielded with respect to  
02:50:51 8 that, we don't -- I don't think anybody knows what that  
02:50:54 9 would have said.

02:50:55 10 Q. And as you sit here, you have no explanation to this  
02:50:57 11 jury as to why one was not done, do you, sir?

02:51:01 12 A. I think I gave an explanation as an economist why you  
02:51:05 13 wouldn't do it. I said: I don't have any idea why  
02:51:08 14 Dr. Neal as a survey expert didn't do it. But as an  
02:51:13 15 economist, I know I wouldn't do it.

02:51:16 16 Q. Dr. Neal didn't offer any explanation as to why he did  
02:51:20 17 not either, did he, sir?

02:51:20 18 A. I -- I didn't hear him give one.

02:51:22 19 Q. Do you know what a pilot survey is, sir?

02:51:22 20 A. Yes.

02:51:24 21 Q. What is that?

02:51:24 22 A. Well, it's my understanding from dealing with survey  
02:51:27 23 experts that surveys can be piloted. I think Dr. Neal  
02:51:30 24 talked about, you know, you -- you test your questions to  
02:51:32 25 make sure they're understandable.

02:51:34 1 And that's not uncommon. I think it's part of the  
02:51:37 2 regular process once you've decided to do a survey to,  
02:51:40 3 before you launch it full scale, you actually sort of do  
02:51:44 4 some testing on it.

02:51:45 5 Q. Do you have any idea, sir, whether or not there was a  
02:51:47 6 pilot survey done of these three patents, and you just were  
02:51:52 7 not shown the results?

02:51:53 8 A. I have no idea.

02:51:54 9 Q. So it could have happened?

02:51:55 10 A. I mean, I -- I mean, given that I don't know what was  
02:52:00 11 done, I was provided with Dr. Neal's results. I don't  
02:52:05 12 know.

02:52:05 13 Q. It's also true, sir, that the '137/'481, as you showed  
02:52:11 14 this jury, that's actually the claim where you want  
02:52:13 15 \$10 million, correct?

02:52:16 16 A. It's -- when you say I want \$10 million, I don't have  
02:52:20 17 an interest in this outcome. I'm simply giving this jury  
02:52:24 18 what I think is the reasonable royalty rate, and then I do  
02:52:27 19 the math on what the result is.

02:52:30 20 Q. Those are the two patents where you've asked this jury  
02:52:34 21 to award \$10.8 million against Supercell; isn't that  
02:52:34 22 correct?

02:52:38 23 A. I -- those are my numbers for those patents, yes.

02:52:41 24 Q. And, likewise, you have -- there's no survey  
02:52:43 25 information for those two, correct?

02:52:45 1 A. Correct.

02:52:45 2 Q. So your highest royalty rate and the two patents for

02:52:48 3 which you seek the most amount of money, you have zero

02:52:54 4 survey evidence related to those specific features or even

02:52:58 5 to this game, correct?

02:53:00 6 A. Correct.

02:53:04 7 Q. Do you remember where we started this, sir?

02:53:09 8 A. Yes.

02:53:10 9 Q. We started by saying you ought to give the best

02:53:14 10 evidence that you have available; isn't that correct?

02:53:16 11 A. Yes.

02:53:16 12 Q. That could have been a survey, correct?

02:53:19 13 A. In my economic opinion, I -- I've -- economic reasons

02:53:24 14 why I think there would have been -- it would not have

02:53:27 15 given me the kind evidence I need to ask people a survey

02:53:32 16 question about these particular features of Brawl Stars and

02:53:38 17 Clash Royale. But, you know, in the abstract, one could do

02:53:41 18 a survey. You could try.

02:53:44 19 Q. Didn't try, did they?

02:53:46 20 A. I -- I'm not the survey expert. I'm here to evaluate

02:53:49 21 the economic evidence.

02:53:50 22 Q. Now, not only did Supercell not do a survey for these

02:53:59 23 three patents, sir, the truth is for the '655 and '594, you

02:54:04 24 actually cherry picked the information that you wanted to

02:54:08 25 use and -- and present to this jury; isn't that fair?

02:54:11 1 A. No, that's -- I don't think that's fair. I considered  
02:54:14 2 all of the information in Dr. Neal's survey.

02:54:18 3 MR. DACUS: Can we pull up Exhibit 1B to the 070  
02:54:23 4 report, please, Mr. Smith? Can we blow up that first  
02:54:33 5 table? Thank you.

02:54:35 6 Q. (By Mr. Dacus) Dr. Becker, this is part of your  
02:54:42 7 report, correct?

02:54:42 8 A. It is.

02:54:43 9 Q. This is the calculation you did for the '655 patent,  
02:54:47 10 correct?

02:54:47 11 A. It is.

02:54:49 12 Q. And you have labeled on the right-hand side A through

02:54:55 13 E. Do you see those items?

02:54:57 14 A. Yes.

02:54:58 15 Q. Those are all items that come from -- they're parts of  
02:55:04 16 your calculation, first of all, correct?

02:55:06 17 A. Yes.

02:55:06 18 Q. Those are things that come from Dr. Neal's survey,  
02:55:11 19 correct?

02:55:11 20 A. A and B do. A, B, and D do. The rest -- C and E is  
02:55:18 21 math that I'm doing.

02:55:19 22 Q. Let me ask a better question. That is, all of these  
02:55:23 23 numbers, A through E, are dependent on Dr. Neal's surveys,  
02:55:29 24 correct?

02:55:29 25 A. Correct.

02:55:29 1 Q. And what this shows is that 241 participants were total  
02:55:34 2 paying respondents to the survey who played the -- this  
02:55:39 3 particular game, correct?

02:55:42 4 A. Yes.

02:55:43 5 Q. Now, that 241 is out of millions and millions of people  
02:55:46 6 who have actually played the game, correct?

02:55:48 7 A. Correct.

02:55:48 8 Q. And 60 of those 241 said that the feature was  
02:55:53 9 important, and that they would play less if it was removed,  
02:55:57 10 correct?

02:55:57 11 A. Correct.

02:55:57 12 MR. DACUS: Now, can we pan back out, Mr. Smith,  
02:56:00 13 and show both tables and maybe blow up both of them, if we  
02:56:05 14 could? Thank you.

02:56:10 15 Q. (By Mr. Dacus) Now, this top table is the 1.1 percent  
02:56:15 16 royalty rate that you actually used, correct?

02:56:17 17 A. Correct.

02:56:17 18 Q. But what's reflected in the table below is the fact  
02:56:20 19 that actually 26 of the respondents said the feature was  
02:56:27 20 important, but they would actually play the game more if  
02:56:30 21 the feature was removed, correct?

02:56:32 22 A. Yes. We talked about that.

02:56:33 23 Q. But -- and if those -- that number of participants and  
02:56:36 24 that information was actually included, then the royalty  
02:56:40 25 rate would actually be .45 percent; isn't that true?

02:56:45 1 A. Mathematically, yes. If you included those and treated  
02:56:48 2 them without consideration of the other evidence in the  
02:56:51 3 case, it would be .45.

02:56:52 4 MR. DACUS: Your Honor, may I approach the easel?

02:56:55 5 THE COURT: You may.

02:56:55 6 MR. DACUS: Thank you.

02:56:56 7 Q. (By Mr. Dacus) So it's a true statement, sir, that if  
02:57:22 8 you were to consider all of the survey respondents and you  
02:57:27 9 were to consider all of the evidence, those -- both those  
02:57:30 10 who said they would play the game more and those who said  
02:57:34 11 they would play the game less, it would reduce your royalty  
02:57:38 12 that you used by significantly more than half, correct?

02:57:43 13 A. No, I disagree. You said if I consider all the  
02:57:47 14 evidence.

02:57:47 15 Q. If -- if you consider both categories of respondents in  
02:57:54 16 Dr. Neal's survey, it would reduce your royalty by more  
02:57:58 17 than half, correct?

02:58:00 18 A. If I blindly consider both buckets of respondents  
02:58:05 19 without considering the other evidence, all of the  
02:58:08 20 evidence, I would mathematically get to a royalty -- I -- I  
02:58:13 21 wouldn't label it the true royalty, but it is a recomputed  
02:58:16 22 royalty of .45 percent.

02:58:18 23 Q. And you've said that word "blindly" three or four  
02:58:22 24 times. The reason you're saying that is you gave this jury  
02:58:26 25 some explanation to say you think you should disregard the

02:58:29 1 participants in the lower table because you consider  
02:58:31 2 them -- that they would actually be spending their time  
02:58:34 3 grinding, correct?

02:58:34 4 A. I think my testimony was more expansive than that, but  
02:58:41 5 ultimately I concluded -- I concluded that it was -- that  
02:58:44 6 the reasonable -- that it was reasonable to treat that  
02:58:46 7 bucket of spend more time for this particular feature as  
02:58:49 8 non-productive time, and, thus, to not include it in the  
02:58:52 9 royalty calculation.

02:58:53 10 Q. At a high level, sir, what you did is when the  
02:58:56 11 information was favorable to GREE, you used that  
02:59:00 12 information in your royalty calculation, correct?

02:59:05 13 A. No, I -- I don't think that that's a fair statement at  
02:59:08 14 a high level at all. I had other data that led to an  
02:59:13 15 even -- a royalty rate that was three times the size of  
02:59:16 16 this royalty rate, and I picked out all the evidence --  
02:59:20 17 what I thought was the most reasonable.

02:59:22 18 Q. That other royalty rate that you just referenced, sir,  
02:59:25 19 was not a measure of time, correct? It wasn't a measure --  
02:59:29 20 a measure of how much time a player spent in a game,  
02:59:32 21 correct?

02:59:32 22 A. That's correct. It was -- it was another way of  
02:59:34 23 looking at it based on the probability that somebody would  
02:59:37 24 make an in-app purchase --

02:59:38 25 Q. Correct.

02:59:39 1 A. -- which is another very important thing.

02:59:48 2 MR. DACUS: Can we pull up Exhibit 1B from the 071  
02:59:52 3 report, Mr. Smith?

03:00:07 4 Q. (By Mr. Dacus) What's shown on the screen there,  
03:00:09 5 Dr. Becker, is your calculation related -- of royalty  
03:00:13 6 related to the '594 patent, correct?

03:00:15 7 A. Yes.

03:00:16 8 Q. And, again, what Dr. Neal's survey showed is that out  
03:00:20 9 of 238 participants in the survey, 25 would spend less time  
03:00:25 10 playing the game if the feature was removed, correct?

03:00:28 11 A. Out of the paying participants, yes.

03:00:31 12 Q. But it also showed, if we look at the bottom, that 20  
03:00:35 13 of those paying participants said they would actually  
03:00:40 14 increase or play the game more if it -- the feature was  
03:00:43 15 removed, correct?

03:00:44 16 A. Absolutely, yes.

03:00:45 17 Q. And it's true, sir, that if you were to take all the  
03:00:49 18 evidence, which is where we started this, as it relates to  
03:00:52 19 Dr. Neal's survey, the royalty for the '594 would actually  
03:00:56 20 be zero percent; isn't that true?

03:00:58 21 A. No. I disagree that if you consider all the evidence.  
03:01:02 22 Again, if you just plug the numbers in, it would lead to  
03:01:06 23 zero.

03:01:06 24 Q. If you consider all of the information from Dr. Neal's  
03:01:11 25 survey, both those who would play less and those who would

03:01:14 1 play more, the royalty would be zero. That is a true  
03:01:18 2 statement, correct?

03:01:18 3 A. That's a true statement. If I only look at the survey  
03:01:21 4 and no other evidence.

03:01:22 5 MR. DACUS: May I approach, Your Honor?

03:01:23 6 THE COURT: Yes.

03:01:24 7 MR. DACUS: Thank you.

03:01:25 8 Q. (By Mr. Dacus) The truth is, sir, if -- if we look at  
03:01:41 9 the bottom table in your report, you see next to Item P --  
03:01:45 10 as in Paul -- it says negative .04 percent. Do you see  
03:01:51 11 that?

03:01:51 12 A. Yes.

03:01:51 13 Q. This means that by removing the feature, players would  
03:01:56 14 actually play more; isn't that correct?

03:01:57 15 A. Yes, that's -- that's an important finding, yes.

03:01:59 16 Q. So the logic to that is, if you remove the feature  
03:02:06 17 which you claim is so valuable, Supercell would actually  
03:02:09 18 make more money, correct?

03:02:12 19 A. No. And that's -- that's the crux of this point is  
03:02:15 20 that the kind of time that they would spend to play more is  
03:02:20 21 clearly not productive time.

03:02:23 22 Q. Well, that's where we have a disagreement, correct?

03:02:27 23 A. Well, I -- I mean, I respectfully disagree. And I  
03:02:29 24 think the evidence from Supercell disagrees with you.

03:02:33 25 Q. Because what your slide said to this jury just about an

03:02:37 1 hour ago was time spent playing equals revenue. That's  
03:02:41 2 what your slide said, isn't it?

03:02:42 3 A. That the time in the game as it is designed  
03:02:48 4 encourages -- has a relationship between time in the game  
03:02:52 5 and money.

03:02:53 6 Q. It -- it would have been, sir, absolutely economically  
03:02:57 7 appropriate for you to utilize the results of the '594  
03:03:03 8 patent as reflected by Dr. Neal's survey and apply those to  
03:03:08 9 the '137, '481, and '873 because they all relate to mobile  
03:03:13 10 games and they all allegedly increase or enhance player  
03:03:17 11 time. Isn't that true?

03:03:19 12 A. They -- I mean, they increase player engagement.  
03:03:28 13 I've -- you could have done that. I think there are issues  
03:03:33 14 when the '655 patent is not -- doesn't stand on an equal  
03:03:37 15 footing as a comp with the '594 with respect to the other  
03:03:41 16 Clash Royale feature. But with respect to Brawl Stars, I  
03:03:43 17 don't disagree with you.

03:03:44 18 Q. So we can at least agree that with respect to Brawl  
03:03:47 19 Stars, the '873 patent, it would have been perfectly  
03:03:53 20 economically appropriate to take the results from the '594  
03:03:55 21 and use those for the '873, correct?

03:03:57 22 A. Yes.

03:03:57 23 Q. And if we took all of Dr. Neal's survey -- I understand  
03:04:02 24 you don't want to -- but if we did, that number would be  
03:04:07 25 zero instead of 2.4 percent; isn't that correct, sir?

03:04:10 1 A. Mathematically, that's what the result would be, yes.

03:04:21 2 MR. DACUS: We can take that down, Mr. Smith.

03:04:25 3 Thank you.

03:04:26 4 Now, can you pull up PTX-105, Mr. Smith?

03:04:41 5 Q. (By Mr. Dacus) Now, for the '655 and the '137/'481 you

03:04:47 6 had these alternative calculations based on whether or not

03:04:50 7 Supercell had notice of the patents, correct?

03:04:52 8 A. Correct.

03:04:52 9 Q. And as I understand, your position and Supercell's

03:04:59 10 position is -- you claim -- or Supercell claims -- I'm

03:05:01 11 sorry, GREE claims that Supercell had notice of those three

03:05:03 12 patents as far back as September 12th of 2016, correct?

03:05:10 13 A. I -- honestly, I'm only vaguely aware of the nature of

03:05:14 14 that claim. I was simply told to calculate royalties

03:05:19 15 beginning in September of 2016. And as somebody who works

03:05:24 16 in this area, I understand kind of vaguely the legal theory

03:05:27 17 behind that, but I haven't looked at this question at all.

03:05:30 18 MR. DACUS: So, Mr. Smith, you have up Plaintiff's

03:05:32 19 Exhibit 105, correct? Can you show the entirety of that

03:05:36 20 document, please, sir?

03:05:37 21 Q. (By Mr. Dacus) Do you even know enough, sir, to know

03:05:40 22 that what Supercell claims is that this September 12th,

03:05:43 23 2016, letter, which is Plaintiff's Exhibit 105, is what

03:05:47 24 gave Supercell notice of those three patents? Do you?

03:05:51 25 A. I can infer from its prominence in these proceedings

03:05:56 1 that when I was told there was a letter and the date of  
03:05:59 2 that letter would trigger the notice date, that this must  
03:06:02 3 be that letter. But beyond that, honestly I haven't been  
03:06:05 4 asked to look at this question at all.

03:06:15 5 Q. Ultimately, sir, for these three patents, if we wanted  
03:06:18 6 to know what the true royalty was that included all  
03:06:26 7 respondents to a survey, both those who would play more and  
03:06:29 8 those who would play less, we just don't know, do we,  
03:06:36 9 because there hasn't been a survey done? Isn't that  
03:06:36 10 correct?

03:06:40 11 A. Well, I -- I believe that their -- that the true  
03:06:43 12 royalty -- the most reasonable royalty is the ones that I  
03:06:47 13 presented that considers all the available evidence that I  
03:06:49 14 had in this case.

03:06:49 15 Q. In the end, sir, these numbers that you used, despite  
03:06:53 16 the fact that all the evidence that you showed this jury,  
03:06:56 17 all those emails and Slack, you got your number from  
03:07:02 18 Dr. Neal's survey, correct?

03:07:04 19 A. Not only from his survey. I mean, it's -- I've  
03:07:08 20 considered a tremendous amount of evidence in this case,  
03:07:11 21 millions and millions of records of player data to reach  
03:07:15 22 those rates that you have on this -- on the chart there.

03:07:19 23 Q. Dr. Neal's survey showed that for the '655 patent, if  
03:07:23 24 you calculate the royalty, just based on one category, it  
03:07:28 25 was 1.1 percent. That's what his survey showed?

03:07:31 1 A. No.

03:07:32 2 Q. That's -- that's what led you to that calculation of

03:07:35 3 1.1 percent?

03:07:36 4 A. It -- the process that I used to get to the 1.1 was

03:07:40 5 based in part, but only in part, on consideration of

03:07:45 6 Dr. Neal's survey.

03:07:46 7 Q. And, likewise, for the .7 percent, correct?

03:07:49 8 A. Correct.

03:07:52 9 MR. DACUS: That's all I have, Your Honor. I pass

03:07:53 10 the witness.

03:07:54 11 THE COURT: All right. Redirect, Ms. Ludlam?

03:07:57 12 MS. LUDLAM: Yes. Thank you, Your Honor.

03:08:03 13 THE COURT: Mr. Dacus, you need to move the easel

03:08:07 14 back.

03:08:08 15 MR. DACUS: Yes, Your Honor.

03:08:10 16 THE COURT: And turn it to a clean sheet.

03:08:13 17 MR. DACUS: Thank you. I apologize.

03:08:17 18 THE COURT: Let's turn it to a clean sheet, not

03:08:19 19 one --

03:08:20 20 MR. DACUS: Oh, I'm sorry.

03:08:21 21 THE COURT: Not one with the seven times on it.

03:08:24 22 MR. DACUS: I'll be happy to turn that one over.

03:08:27 23 THE COURT: Thank you. All right. We'll proceed

03:08:29 24 with redirect.

03:08:31 25 MS. LUDLAM: Thank you.

03:08:31 1 REDIRECT EXAMINATION

03:08:32 2 BY MS. LUDLAM:

03:08:32 3 Q. Dr. Becker, are you aware if Supercell has ever removed

03:08:36 4 any of the features that you analyzed from the damages

03:08:40 5 perspective in this case?

03:08:40 6 A. No, it's my understanding that they have not.

03:08:42 7 Q. Okay. And, Dr. Becker, Mr. Dacus seemed to imply that

03:08:46 8 you could use the '594 rate to determine the rate for the

03:08:50 9 '137, '481, and '873 patents; do you remember that?

03:08:54 10 A. Yes.

03:08:54 11 Q. If you were to use that rate to determine the value of

03:08:59 12 the others, would your royalties change?

03:09:00 13 A. Not materially, no.

03:09:02 14 Q. And why is that?

03:09:04 15 A. Well, the -- the .7 percent rate is lower math -- the

03:09:10 16 biggest driver of why it's lower is that the extent of use

03:09:15 17 of that feature was significantly lower. I think it's

03:09:21 18 40-something percent of users use that. And recall it --

03:09:25 19 the '137/'481 patents are used by a hundred percent of the

03:09:32 20 players. And the '873 Brawl Stars patent is used by a

03:09:36 21 hundred percent of the players.

03:09:37 22 So if I start, yes, it would be a lower starting

03:09:41 23 point, .7. But the adjustment from a feature that's used

03:09:45 24 by 40 percent of the players up to a hundred percent would

03:09:49 25 effectively adjust for that difference between .7 percent

03:09:54 1 and 1.1 percent.

03:09:56 2 Q. Okay. And, Dr. Becker, from an economic perspective,  
03:10:01 3 why wouldn't you survey the '137, '481, or '873 patents?

03:10:05 4 A. Well, economically, it would be -- excuse me, you'd be  
03:10:09 5 asking people -- again, I'm not a survey expert, but the  
03:10:14 6 economic choice you're presenting them is, would you like  
03:10:17 7 this game without its core feature?

03:10:21 8 And I think the analogy I use would be if you --  
03:10:25 9 you know, are you going to field a survey to ask golfers if  
03:10:29 10 they like playing golf without their golf clubs.

03:10:32 11 I think you could go ask people at a golf course,  
03:10:35 12 do you like the 9th hole the way it bends to the left?  
03:10:40 13 Because every golf course could be designed in a different  
03:10:43 14 way.

03:10:43 15 But if you're talking about fundamentally removing  
03:10:46 16 a core element, you know, I'm not sure that the survey --  
03:10:51 17 you know, what would that be? What would you ask them as  
03:10:54 18 the alternative? Not playing? Well, then it's just,  
03:10:57 19 what's the value of the game as a whole?

03:11:00 20 Q. And, Dr. Becker, Mr. Dacus spent a lot of time talking  
03:11:03 21 with you about the license in Japan, correct?

03:11:05 22 A. Yes.

03:11:06 23 Q. And their own expert -- Supercell's own expert agreed  
03:11:10 24 with you that that license is not comparable, correct?

03:11:14 25 A. That's true. He -- it's not comparable, and so it's --

03:11:18 1 it's not relevant.

03:11:19 2 Q. Great.

03:11:20 3 MS. LUDLAM: I have no further questions,

03:11:22 4 Your Honor.

03:11:22 5 THE COURT: All right. Additional cross,

03:11:23 6 Mr. Dacus?

03:11:24 7 MR. DACUS: Just a couple, Your Honor.

03:11:24 8 RECROSS-EXAMINATION

03:11:33 9 BY MR. DACUS:

03:11:33 10 Q. You said, Dr. Becker, that Supercell has not removed

03:11:38 11 any of these features from its games?

03:11:40 12 A. I'm not aware that they have.

03:11:43 13 Q. You agree, sir, that if Supercell believes it does not

03:11:45 14 use these patented features, they should not have to remove

03:11:48 15 them? They should be able to come to this jury and present

03:11:52 16 the facts and the evidence and let this jury determine

03:11:56 17 that; isn't that true?

03:11:56 18 A. Well, they ultimately have the right to -- to get a

03:11:59 19 ruling from this jury on that, but as to the economic

03:12:02 20 question, if I'm evaluating -- like the -- one of the

03:12:08 21 pieces of math you took me to that's -- that if you blindly

03:12:12 22 do the math with all of the survey results, it suggests

03:12:20 23 that they would make more money if they took out this

03:12:22 24 feature we saw on the slide message as saying they thought

03:12:25 25 it was a pretty cool feature.

03:12:27 1 Completely independent of this lawsuit, if that  
03:12:30 2 were actually the case, it would be rational for them to  
03:12:33 3 take the feature out and to have never put it in the  
03:12:37 4 first place.

03:12:37 5 Q. And did I understand you to say, sir, when asked just  
03:12:44 6 now, that you do not believe it is appropriate to conduct a  
03:12:48 7 survey on the '137, '481, and '873 because they're core  
03:12:52 8 features; is that what you just said?

03:12:54 9 A. Not necessarily to appropriateness. I just -- I think  
03:12:57 10 the question was as -- as an economic matter, would I think  
03:13:04 11 that a survey would be useful. And I don't think it would  
03:13:07 12 be.

03:13:07 13 Q. Yet -- yet you use survey information to calculate the  
03:13:11 14 percentages, correct?

03:13:13 15 A. Well, I used things -- I used information from things  
03:13:17 16 that I think are surveyable and used those as comparables  
03:13:21 17 to value the core features.

03:13:24 18 MR. DACUS: That's all I have, Your Honor. I pass  
03:13:25 19 the witness.

03:13:26 20 THE COURT: Further direct?

03:13:27 21 MS. LUDLAM: No further questions, Your Honor.

03:13:29 22 THE COURT: All right. You may step down,  
03:13:30 23 Dr. Becker.

03:13:43 24 Plaintiffs, call your next witness.

03:13:45 25 MR. MOORE: Your Honor, the Plaintiff rests its

03:13:47 1 case-in-chief.

03:13:47 2 THE COURT: All right. Ladies and gentlemen of  
03:13:50 3 the jury, the Plaintiff has rested its case-in-chief.

03:13:52 4 We're going to use this as a good juncture to take  
03:13:58 5 a recess. After you return from recess, we'll proceed with  
03:14:02 6 the Defendant's case-in-chief and have them call their  
03:14:05 7 first witness.

03:14:06 8 Please follow all the instructions I've given you,  
03:14:10 9 including not to talk about the case with each other.  
03:14:12 10 Simply leave your notebooks in your chairs, leave them  
03:14:15 11 closed in your chairs, if you will, and we'll have you back  
03:14:18 12 in here shortly to continue with the Defendant's  
03:14:21 13 case-in-chief.

03:14:21 14 The jury is excused for recess.

03:14:27 15 COURT SECURITY OFFICER: All rise.

03:14:32 16 (Jury out.)

03:14:32 17 THE COURT: Counsel, take five minutes for a  
03:14:49 18 restroom break, and then see me in chambers about this  
03:14:53 19 remaining issue concerning the objections to trial  
03:14:57 20 depositions.

03:14:57 21 The Court stands in recess.

03:15:00 22 (Recess.)

03:33:33 23 (Jury out.)

03:33:33 24 COURT SECURITY OFFICER: All rise.

03:33:34 25 THE COURT: Be seated, please.

03:51:37 1 Mr. Sacksteder, is the Defendant prepared to go  
03:51:48 2 forward with its case-in-chief?

03:51:50 3 MR. SACKSTEDER: We are, Your Honor.

03:51:51 4 THE COURT: Let's bring in the jury, please.

03:51:54 5 COURT SECURITY OFFICER: All rise.

03:51:55 6 (Jury in.)

03:52:24 7 THE COURT: Please be seated.

03:52:24 8 Before we recessed for a brief break, ladies and  
03:52:35 9 gentlemen, the Plaintiff rested its case-in-chief.

03:52:37 10 We'll now proceed with the Defendant's  
03:52:39 11 case-in-chief.

03:52:40 12 Mr. Sacksteder, please call the Defendant's first  
03:52:43 13 witness.

03:52:44 14 MR. SACKSTEDER: Thank you, Your Honor. Supercell  
03:52:45 15 calls Greg Harper.

03:52:46 16 THE COURT: All right. If you'll come forward,  
03:52:50 17 Mr. Harper, and be sworn. Doesn't matter how you get  
03:53:04 18 there.

03:53:05 19 (Witness sworn.)

03:53:13 20 THE COURT: Please come around this way, and have  
03:53:15 21 a seat on the witness stand.

03:53:28 22 All right. Counsel, you may proceed with your  
03:53:31 23 direct examination.

03:53:33 24 MR. SACKSTEDER: Thank you, Your Honor.

03:53:33 25 GREG HARPER, DEFENDANT'S WITNESS

03:53:33 1 DIRECT EXAMINATION

03:53:34 2 BY MR. SACKSTEDER:

03:53:34 3 Q. Good afternoon, Mr. Harper.

03:53:36 4 A. Good afternoon.

03:53:38 5 Q. Would you please introduce yourself to the jury?

03:53:41 6 A. Hi. My name is Gregory Kent Harper.

03:53:44 7 Q. Will you tell the jury a little bit about yourself?

03:53:46 8 A. So I've been in the Bay Area for a little over 30  
03:53:50 9 years, and I've spent 25 of those 30 years working in the  
03:53:56 10 games industry. I live just north of San Francisco.

03:53:59 11 I have a daughter named Delilah, who next week  
03:54:03 12 turns 10; and a son, Graham, who is 6.

03:54:08 13 Q. Where do you work?

03:54:08 14 A. I work at Supercell.

03:54:09 15 Q. How long have you worked at Supercell?

03:54:11 16 A. Been there a little over eight years. Started in  
03:54:14 17 January 2012.

03:54:16 18 Q. What's your role at Supercell?

03:54:17 19 A. I'm the general manager. I also sit on our board of  
03:54:21 20 directors and am part of our leadership team.

03:54:23 21 Q. Where is your office?

03:54:24 22 A. San Francisco.

03:54:25 23 Q. And is that the same office that Mr. Ostler works in?

03:54:28 24 A. It is.

03:54:29 25 Q. Can you tell us your background of what you did before

03:54:36 1 you worked for Supercell?

03:54:37 2 A. So since the age of 15, I've been starting companies.

03:54:47 3 I've started about 11 of them. Nine of them have failed.

03:54:50 4 And I am part of seven other game companies and consulted

03:54:53 5 for numerous companies.

03:54:54 6 Q. You're on the leadership team at Supercell?

03:54:57 7 A. Correct.

03:54:57 8 Q. What is that?

03:54:58 9 A. So the leadership team is essentially our management  
03:55:01 10 team. It consists of three of us: myself; Ilkka Paananen,  
03:55:09 11 our CEO; and Janne Snellman, our CFO and COO.

03:55:09 12 THE COURT: Mr. Harper, pull that microphone a

03:55:11 13 little closer to you, please, sir.

03:55:13 14 THE WITNESS: Sure.

03:55:13 15 THE COURT: Thank you.

03:55:16 16 Q. (By Mr. Sacksteder) I need to take you through a  
03:55:18 17 little bit of the alphabet soup, if you can let me do that.

03:55:21 18 Is that okay? You said CEO. What is the CEO?

03:55:25 19 A. Chief executive officer.

03:55:28 20 Q. And then there's someone who is both CFO and COO. What  
03:55:33 21 do those folks do?

03:55:34 22 A. Chief financial officer and chief operating officer.

03:55:38 23 MR. SACKSTEDER: Can we, Mr. Smith, look at  
03:55:41 24 DX-1190, Page 12, please?

03:55:43 25 Q. (By Mr. Sacksteder) Can you walk the jury through the

03:55:46 1 typical structure for a game company's organization?

03:55:51 2 A. So this is an organization structure where you have the

03:55:57 3 CEO and the executive team at the top, where most of the

03:56:02 4 power and decision-making is concentrated. And everybody

03:56:06 5 else is below, usually having to go through approval

03:56:12 6 processes to get their work and ideas passed.

03:56:14 7 Q. What's the little light bulb at the top?

03:56:17 8 A. That is meant to represent where the big ideas come

03:56:21 9 from.

03:56:22 10 MR. SACKSTEDER: Can we see Page 14, Mr. Smith?

03:56:24 11 Q. (By Mr. Sacksteder) What are we looking at now?

03:56:30 12 A. So this is really our view of how the org structure

03:56:37 13 works at Supercell where the big ideas and the

03:56:40 14 decision-making happens within the game teams.

03:56:44 15 And the leadership team, including myself, is here

03:56:47 16 at the bottom. And our main role is simply to support

03:56:50 17 those teams.

03:56:51 18 Q. What's the purpose of doing it that way?

03:56:53 19 A. We believe that this is -- allows us to attract the

03:56:59 20 best talent, because this is the kind of environment where

03:57:02 21 they want to work, where they have that control and ability

03:57:04 22 and where their ideas are respected and they're

03:57:09 23 independent.

03:57:09 24 Q. Does Supercell have a mission statement?

03:57:10 25 A. We do. We refer to it as our dream, but it is to

03:57:17 1 create great games that are played by as many people as  
03:57:22 2 possible for years and years and remembered forever.  
03:57:25 3 Q. Has Supercell fulfilled that dream, as you called it?  
03:57:29 4 A. Well, we take a very long view of that dream. And  
03:57:33 5 while even today we have millions of people playing our  
03:57:37 6 first two games, Clash of Clans and Hay Day, a full eight  
03:57:43 7 years later, we still think it's very, very early in that  
03:57:46 8 journey, but we're still working on it. But so far, so  
03:57:51 9 good.  
03:57:51 10 Q. How did you come to join Supercell?  
03:57:55 11 A. I was introduced to Ilkka, our CEO, in the fall of 2011  
03:57:59 12 by a recruiter and was initially attracted to the boldness  
03:58:03 13 of their vision, as well as this idea of creating a  
03:58:05 14 different kind of company where culture was at the heart of  
03:58:08 15 the company. And they wanted to do things differently.  
03:58:14 16 Q. When was Supercell founded?  
03:58:16 17 A. The company was founded in May of 2010.  
03:58:21 18 MR. SACKSTEDER: Can we look at DX-1190, Page 6,  
03:58:25 19 please, Mr. Smith?  
03:58:27 20 Q. (By Mr. Sacksteder) What are we seeing on the screen  
03:58:29 21 here, Mr. Harper?  
03:58:29 22 A. This is a photo of our very first office.  
03:58:32 23 Q. Can you describe it a little bit?  
03:58:34 24 A. It's very small and pretty much representative of the  
03:58:44 25 scrappy new start-up.

03:58:45 1 Q. And this was 2010?

03:58:46 2 A. 2010, yes.

03:58:48 3 MR. SACKSTEDER: And can we look at Page 8,  
03:58:50 4 please?

03:58:50 5 Q. (By Mr. Sacksteder) Who's the guy working on the  
03:59:00 6 cardboard box?

03:59:00 7 A. So this is Ilkka, our CEO. And when we added some more  
03:59:05 8 people and outgrew that small room we were in, he decided  
03:59:09 9 that he would be the one to move out first. And so he's --  
03:59:14 10 this is him in the hall working at his new office setup so  
03:59:19 11 that he could allow the other folks to focus on the games  
03:59:23 12 and what's important.

03:59:26 13 THE COURT: Let me ask -- let me ask you this,  
03:59:27 14 Mr. Harper. What is the gentleman's full name?

03:59:31 15 THE WITNESS: Ilkka Paananen.

03:59:33 16 THE COURT: Okay. If you would, let's not refer  
03:59:35 17 to him by first name only. Please refer to him as whatever  
03:59:35 18 his last name is or both names, but not first name only,  
03:59:43 19 okay?

03:59:43 20 THE WITNESS: Yes, sir.

03:59:43 21 THE COURT: All right. Let's continue.

03:59:45 22 Q. (By Mr. Sacksteder) What was Supercell's original  
03:59:48 23 product strategy?

03:59:49 24 A. So at the start, our original project strategy was to  
03:59:49 25 focus on social, multiplayer games that were being played

03:59:56 1 across multiple platforms starting with Facebook.

03:59:57 2 Q. Did that strategy change at some point?

04:00:00 3 A. It did, about a year later.

04:00:01 4 Q. What happened?

04:00:02 5 A. Well, we had moderate success with that strategy, and

04:00:06 6 then in mid-2011, we became fascinated with tablets and

04:00:13 7 iPads and the opportunity there. We saw the iPad as sort

04:00:18 8 of the ultimate games platform and shifted strategy to

04:00:22 9 focus entirely on that.

04:00:24 10 Q. Would that be mobile games?

04:00:25 11 A. Correct.

04:00:27 12 Q. What was the first mobile game that Supercell released?

04:00:31 13 A. So in June of 2012, we launched Hay Day, our first

04:00:37 14 game.

04:00:37 15 MR. SACKSTEDER: Can we see DM 12, Page 2, please,

04:00:43 16 Mr. Smith?

04:00:43 17 Q. (By Mr. Sacksteder) What is Hay Day?

04:00:45 18 A. Hay Day is a farming simulation game.

04:00:48 19 Q. And what do the players do in Hay Day?

04:00:51 20 A. They tend to their farm and grow their farm.

04:00:57 21 Q. Hay Day is still around?

04:00:58 22 A. It is.

04:00:59 23 Q. And what was the next game that Supercell released?

04:01:02 24 A. So two months later, in August, we released Clash of

04:01:07 25 Clans.

04:01:07 1 Q. What does Supercell, the name, refer to?

04:01:11 2 A. So at the core of our company, we believe in small  
04:01:15 3 independent teams, or as we refer to them, as cells, and so  
04:01:20 4 the company is the Supercell.

04:01:23 5 MR. SACKSTEDER: Can we look at DX-1190, Page 15,  
04:01:26 6 please, Mr. Smith?

04:01:28 7 Q. (By Mr. Sacksteder) What are the values that the team  
04:01:34 8 members at Supercell strive for?

04:01:37 9 A. So this -- this picture here represents those four core  
04:01:42 10 values for us. It's independence, quality, responsibility,  
04:01:46 11 and learning.

04:01:50 12 And so underneath all that is a foundation of the  
04:01:53 13 sense of trust. And when all those things come together  
04:01:56 14 and work well at the company, we see considerable impact  
04:01:59 15 for the business.

04:02:01 16 Q. And how has the company grown?

04:02:05 17 A. So we are now about 320 people across four offices, and  
04:02:12 18 we have five live games operating in the market today.

04:02:16 19 Q. So 320 Supercellians?

04:02:21 20 A. That's what we refer to ourselves as, yes.

04:02:23 21 Q. Is that how you pronounce it?

04:02:25 22 A. Yes.

04:02:26 23 Q. All right. Thank you.

04:02:28 24 Has -- having this company this size, how has that  
04:02:35 25 affected the culture of the company?

04:02:36 1 A. We have grown very slow, so it's been important for us  
04:02:41 2 to preserve the culture as we grow.

04:02:44 3 So far, I'd say we've been able to maintain that  
04:02:49 4 culture throughout our growth.

04:02:51 5 MR. SACKSTEDER: Can we see the next slide,  
04:02:53 6 Mr. Smith?

04:02:54 7 Q. (By Mr. Sacksteder) Those are the game -- strike that.

04:02:57 8 What are we looking at on the screen?

04:02:59 9 A. These are the five live games that are in the market  
04:03:02 10 today.

04:03:02 11 Q. What are those five games?

04:03:05 12 A. So our first one was Hay Day, followed by Clash of  
04:03:08 13 Clans, and then we released Boom Beach. After Boom was  
04:03:14 14 Clash Royale and most recently Brawl Stars.

04:03:16 15 Q. Beyond the games that we're looking at on the screen,  
04:03:19 16 are there any other games that have been developed by  
04:03:21 17 Supercell?

04:03:21 18 A. We have developed several other games.

04:03:23 19 Q. Have they been released?

04:03:25 20 A. No, we decided not to release them.

04:03:27 21 Q. Why not?

04:03:28 22 A. So in the end, we decided -- and the teams themselves  
04:03:34 23 make the decision -- that the games would not align with  
04:03:37 24 our vision of a game that would be played for years and  
04:03:39 25 years and remembered forever.

04:03:43 1 Q. How does Supercell view competition?

04:03:46 2 A. I think like most people in the industry, we subscribe

04:03:49 3 to services that provide industry research and reports.

04:03:56 4 But, generally, we don't look at other companies. We tend

04:03:59 5 to focus just inwardly and try to figure out what we can do

04:04:05 6 to make ourselves better and improve. So it's really

04:04:08 7 internal.

04:04:09 8 Q. Before this case, were you aware of GREE?

04:04:11 9 A. I was.

04:04:12 10 Q. Have you ever met with anybody at GREE?

04:04:14 11 A. I did.

04:04:15 12 Q. Can you tell the jury the circumstances?

04:04:17 13 A. In 2013, we took a trip to Japan to evaluate whether we

04:04:21 14 should enter the market there, and we met with several

04:04:25 15 companies, including GREE.

04:04:27 16 Q. And why did you meet with GREE?

04:04:28 17 A. We tried to meet with as many companies as possible

04:04:32 18 during the week we were there, to help us evaluate the

04:04:36 19 market.

04:04:36 20 Q. Did GREE offer a distribution platform at that time?

04:04:39 21 A. They did.

04:04:42 22 Q. And what is a distribution platform?

04:04:44 23 A. It's a place where you can distribute your games to

04:04:49 24 players.

04:04:51 25 Q. What did Supercell decide to do after making that trip

04:04:54 1 to Japan you referred to?

04:04:56 2 A. In the end, we did decide to enter the market. We  
04:04:59 3 concluded that we did not need to change our games. They  
04:05:04 4 could be released as-is. And we decided to distribute them  
04:05:12 5 through our existing partnership with Apple and Google.

04:05:16 6 Q. So are those also distribution platforms?

04:05:20 7 A. They are.

04:05:20 8 Q. After the first set of meetings, did Supercell have any  
04:05:25 9 more contact with GREE?

04:05:25 10 A. We had some follow-up exchanges, but I don't believe it  
04:05:29 11 went anywhere.

04:05:29 12 Q. Have you ever heard of a company called Funzio?

04:05:34 13 A. I have.

04:05:35 14 Q. Have you ever met with anybody at Funzio?

04:05:38 15 A. We met with the founders of Funzio.

04:05:41 16 Q. Why?

04:05:42 17 A. So in the early days, before we were launching our  
04:05:47 18 games, we met with them. And they were gracious enough to  
04:05:51 19 share some of their learnings from their launches, and so  
04:05:57 20 they helped us there.

04:05:58 21 Q. Do you have any understanding of whether there's a  
04:06:00 22 relationship now between Funzio and GREE?

04:06:04 23 A. My understanding is that GREE had acquired Funzio.

04:06:10 24 Q. Has Supercell ever tracked or monitored GREE's patents,  
04:06:14 25 to your knowledge?

04:06:14 1 A. Not to my knowledge.

04:06:15 2 Q. What are Supercell's thoughts on patents in general?

04:06:17 3 A. We respect patents and the key role they play in

04:06:23 4 inventions.

04:06:24 5 MR. SACKSTEDER: Mr. Smith, can we look at PX-480,

04:06:29 6 please?

04:06:31 7 Q. (By Mr. Sacksteder) You testified that you're a member

04:06:33 8 of the board of directors at Supercell, correct?

04:06:35 9 A. Correct.

04:06:35 10 Q. Were you aware of a license agreement between GREE and

04:06:39 11 Supercell?

04:06:39 12 A. Yes.

04:06:40 13 Q. And are we looking at that agreement on the screen?

04:06:43 14 A. Yes.

04:06:43 15 Q. How did you become aware of that agreement?

04:06:46 16 A. It was brought before the board for approval.

04:06:50 17 Q. Why did the board approve the license agreement?

04:06:53 18 A. The board approved because we made the decision that it

04:07:02 19 was better to resolve this now than to have it continue and

04:07:06 20 be this potentially more costly thing that distracted us

04:07:12 21 from our core business.

04:07:14 22 Q. Is this case important to Supercell?

04:07:16 23 A. It's very important to us.

04:07:18 24 Q. Why?

04:07:19 25 A. Well, for two -- two reasons, really. We're very proud

04:07:24 1 of our -- our people and our -- our games, and we don't  
04:07:29 2 believe we've done anything wrong here. And we're  
04:07:33 3 confident that in a trial before a jury in the United  
04:07:40 4 States, that will be proven true.

04:07:43 5 Q. Thank you, Mr. Harper.

04:07:47 6 MR. SACKSTEDER: I'll pass the witness.

04:07:48 7 THE COURT: Cross-examination by the Plaintiff.

04:07:50 8 MR. MOORE: Thank you, Your Honor.

04:08:01 9 THE COURT: Are there binders to distribute for  
04:08:03 10 this witness, Mr. Moore?

04:08:04 11 MR. MOORE: I'm sorry. There are. Thank you for  
04:08:05 12 the reminder, Your Honor.

04:08:20 13 MS. SMITH: May I approach, Your Honor?

04:08:21 14 THE COURT: You may.

04:08:32 15 All right. Whenever you're ready, you may proceed  
04:08:37 16 with cross-examination, Mr. Moore.

04:08:39 17 MR. MOORE: Thank you, Your Honor.

04:08:39 18 CROSS-EXAMINATION

04:08:39 19 BY MR. MOORE:

04:08:39 20 Q. Good afternoon, Mr. Harper.

04:08:42 21 A. Good afternoon.

04:08:42 22 Q. I'm Steve Moore. We met at your depositions, correct?

04:08:46 23 A. Correct.

04:08:47 24 Q. All right. And I'm going to ask you a few questions,  
04:08:49 25 okay?

04:08:50 1 Now, you are not here as Supercell's corporate  
04:08:54 2 representative at this trial, right?  
04:08:56 3 A. Right, correct.  
04:08:56 4 Q. You haven't been here the whole trial?  
04:08:59 5 A. Correct.  
04:08:59 6 Q. In fact, Mr. Ostler here sitting at counsel table is  
04:09:04 7 Supercell's corporate representative for the trial,  
04:09:06 8 correct?  
04:09:06 9 A. Correct.  
04:09:06 10 Q. And as I believe, his job is in marketing and financing  
04:09:10 11 with the U.S. business unit of Supercell; is that right?  
04:09:13 12 A. He wears many -- many hats at Supercell, including  
04:09:18 13 those that you mentioned.  
04:09:19 14 Q. Okay. And he reports to you as a general manager of  
04:09:22 15 that business?  
04:09:23 16 A. Yes.  
04:09:23 17 Q. All right. Now, in your direct examination with  
04:09:26 18 Mr. Sacksteder, you didn't testify about whether Supercell  
04:09:30 19 infringes the GREE patents, correct?  
04:09:33 20 A. Correct.  
04:09:34 21 Q. And you didn't testify about whether the GREE patents  
04:09:37 22 are valid, correct?  
04:09:39 23 A. Correct.  
04:09:40 24 Q. And --  
04:09:42 25 THE COURT: Wait a minute, Mr. Harper. You're

04:09:44 1 going to need to speak up. I can barely hear you, and I'm  
04:09:48 2 six feet away from you.

04:09:50 3 THE WITNESS: Correct.

04:09:50 4 THE COURT: Go ahead, counsel.

04:09:54 5 MR. MOORE: Thank you, Your Honor.

04:09:56 6 Q. (By Mr. Moore) And you understand that if this jury  
04:09:56 7 finds that GREE's patents are valid and infringed, that  
04:09:56 8 Supercell then must pay GREE a reasonable royalty, correct?

04:10:00 9 A. I don't know specifically how it works, but --

04:10:06 10 Q. All right. But in your direct examination, you didn't  
04:10:08 11 say what amount of money Supercell would owe if it is found  
04:10:14 12 to infringe GREE's patents, right?

04:10:17 13 A. Right.

04:10:17 14 Q. Now, Supercell has been successful, hasn't it?

04:10:20 15 A. Yes.

04:10:20 16 Q. And it makes more money than GREE does in the United  
04:10:23 17 States, right?

04:10:23 18 A. I don't know how much money GREE makes in the United  
04:10:27 19 States.

04:10:27 20 Q. It has more hit games than GREE in the United States?

04:10:32 21 A. Yes, it does.

04:10:33 22 Q. But being more successful is not a defense to patent  
04:10:36 23 infringement, is it, Mr. Harper?

04:10:40 24 A. I don't know.

04:10:42 25 Q. Now, in addition to being on the board of directors for

04:10:47 1 Supercell, you are also the general manager of Supercell's  
04:10:51 2 United States and other international offices, correct?  
04:10:55 3 A. Correct.  
04:10:56 4 Q. And the headquarters of Supercell is located in  
04:10:59 5 Helsinki, Finland, correct?  
04:11:00 6 A. Correct.  
04:11:01 7 Q. And -- and Helsinki is where the company was originally  
04:11:07 8 founded by Mr. Paananen at that office that you showed; is  
04:11:12 9 that right?  
04:11:12 10 A. There were six founders, but it was founded there in  
04:11:17 11 Helsinki, correct?  
04:11:18 12 Q. And he was one of those six, correct?  
04:11:20 13 A. Correct.  
04:11:20 14 Q. All right. And you opened the United States office for  
04:11:23 15 Supercell in 2012, correct?  
04:11:26 16 A. Correct.  
04:11:26 17 Q. And that was also the same year that Supercell launched  
04:11:28 18 its first mobile game, right?  
04:11:30 19 A. Correct.  
04:11:30 20 MR. MOORE: Can we pull up Slide No. 4 for  
04:11:34 21 Mr. Harper's slides, please?  
04:11:35 22 Q. (By Mr. Moore) And I'm going to show you a slide that  
04:11:37 23 your counsel showed you in a moment here.  
04:11:48 24 MR. MOORE: Okay. We're having trouble getting  
04:11:50 25 that up. I'll proceed without it.

04:11:54 1 Q. (By Mr. Moore) Do you recall the slide that had the  
04:11:54 2 big group of people, and it said that there were 320  
04:11:57 3 Supercellians, correct?  
04:11:57 4 A. Yes, I do.  
04:11:57 5 Q. But Supercell is not publicly owned, is it?  
04:12:00 6 A. No.  
04:12:00 7 Q. You didn't tell the jury that the majority owner of  
04:12:02 8 Supercell is a company called Tencent, correct?  
04:12:06 9 A. Correct.  
04:12:07 10 Q. And, in fact, Tencent, that's a very large overseas  
04:12:13 11 conglomerate; is that right?  
04:12:16 12 A. That's right.  
04:12:16 13 Q. They have interests in media gaming, social media,  
04:12:22 14 correct?  
04:12:22 15 A. Correct.  
04:12:23 16 Q. All right. And, in fact, you're one of five members of  
04:12:27 17 the board of directors at Supercell, right?  
04:12:29 18 A. Correct.  
04:12:31 19 Q. Super -- sorry, Tencent, has three of those five seats,  
04:12:38 20 correct?  
04:12:38 21 A. That's right.  
04:12:38 22 Q. The other two are you and Mr. Paananen, the CEO, right?  
04:12:44 23 A. Yes.  
04:12:44 24 Q. So in a disputed vote, Tencent would win, right?  
04:12:48 25 A. Correct.

04:12:49 1 Q. Now, how many employees does Tencent have?

04:12:54 2 A. I don't know.

04:12:54 3 Q. Would it surprise you that it has more than 60,000

04:12:59 4 employees?

04:12:59 5 A. No.

04:13:00 6 Q. All right. You personally have never designed a video

04:13:03 7 game, have you?

04:13:04 8 A. No.

04:13:04 9 Q. You've never written code for a game?

04:13:07 10 A. No.

04:13:07 11 Q. And you don't know how to write code for a game, right?

04:13:10 12 A. No, I do not.

04:13:11 13 Q. You also don't read source code, do you?

04:13:15 14 A. No.

04:13:15 15 Q. So you didn't do any design or development work for the

04:13:19 16 three games at issue in this case, Clash of Clans, Clash

04:13:23 17 Royale and Brawl Stars, correct?

04:13:25 18 A. No, I did not.

04:13:26 19 Q. And you're not here to give the jury any specific

04:13:28 20 details about how those games work, are you?

04:13:30 21 A. No, I'm not.

04:13:31 22 Q. You didn't talk about any source code in your direct

04:13:34 23 examination, right?

04:13:35 24 A. No.

04:13:35 25 Q. So, for example, you're not able to tell this jury any

04:13:38 1 of the details for how the Elixir feature works in Clash  
04:13:42 2 Royale?

04:13:42 3 A. No.

04:13:42 4 Q. Nor can you tell them about how the donation and  
04:13:45 5 upgrade features work in Clash Royale, correct?

04:13:47 6 A. No.

04:13:48 7 Q. In fact, you don't really even play Supercell games  
04:13:51 8 anymore, do you?

04:13:52 9 A. Not the live games, no.

04:13:54 10 Q. Not the ones you've actually released, the five that  
04:13:58 11 you talked about on direct?

04:14:00 12 A. Correct.

04:14:00 13 Q. All right. You did talk about, though, GREE. And GREE  
04:14:04 14 is well-known in the gaming industry, right?

04:14:06 15 A. Relatively.

04:14:08 16 Q. Okay. And GREE has been in the space for many years,  
04:14:11 17 haven't they?

04:14:11 18 A. Yes, they have.

04:14:13 19 Q. You know an individual named Andrew Sheppard?

04:14:16 20 A. I know Andrew, yes.

04:14:18 21 Q. And he was previously the CEO of GREE's United States  
04:14:21 22 subsidiary, right?

04:14:22 23 A. I don't recall.

04:14:24 24 Q. Well, in any event, he's been in the gaming industry a  
04:14:27 25 long time?

04:14:28 1 A. That's right.

04:14:28 2 Q. And you believe he has a good reputation in the

04:14:32 3 industry?

04:14:32 4 A. He does.

04:14:33 5 Q. And he's someone who is passionate about games?

04:14:36 6 A. Yes.

04:14:36 7 Q. And you've never heard anything negative about him,

04:14:40 8 have you?

04:14:40 9 A. No.

04:14:40 10 Q. Do you know Mr. Eiji Araki, who is sitting here at

04:14:44 11 counsel table for GREE?

04:14:47 12 A. I do not.

04:14:47 13 Q. All right. Do you have a binder there in front of you?

04:14:51 14 A. Yes.

04:14:51 15 Q. Would you please turn to the tab that is PTX-607?

04:14:56 16 MR. MOORE: And thank you, Mr. Groat. If we could

04:15:00 17 blow this up, please?

04:15:03 18 Q. (By Mr. Moore) All right. This is an email that you

04:15:06 19 sent in September of 2012 to the CEO, Mr. Paananen and

04:15:11 20 others at Supercell, correct?

04:15:13 21 A. Correct.

04:15:14 22 Q. And you say in the email -- well, first of all, you're

04:15:19 23 forwarding something called inside mobile apps, right?

04:15:23 24 A. Yes.

04:15:23 25 Q. And in the first line of the email you say: See

04:15:28 1 comments highlighted in red for quick scan, correct?

04:15:31 2 A. Yes.

04:15:32 3 MR. MOORE: And so could we -- could we show the  
04:15:34 4 whole page, please, Mr. Groat? No, go ahead and blow up  
04:15:37 5 the bottom half, please, including the title of the  
04:15:40 6 article.

04:15:43 7 Q. (By Mr. Moore) So what you forwarded to the CEO and  
04:15:49 8 others at Supercell is an interview that was published in  
04:15:51 9 an article, correct?

04:15:51 10 A. Correct.

04:15:52 11 Q. And the title of the article is GREE's Eiji Araki on  
04:15:57 12 monetization, Japanese versus Western players, and what  
04:16:01 13 makes successful social games, correct?

04:16:04 14 A. Correct.

04:16:04 15 Q. And that's the same Mr. Araki that's sitting here in  
04:16:07 16 the courtroom?

04:16:07 17 A. I don't know.

04:16:08 18 Q. All right. The last sentence on the first page  
04:16:10 19 reads -- of the article reads: We recently sat down with  
04:16:14 20 Eiji Araki, GREE International's senior vice president of  
04:16:22 21 social games, to find out how Japanese companies are able  
04:16:25 22 to make the most lucrative mobile-social games in the  
04:16:29 23 world, and how GREE plans to bring its Japanese gaming  
04:16:32 24 expertise to North America.

04:16:34 25 Do you see that?

04:16:34 1 A. I do.

04:16:35 2 MR. MOORE: All right. Could we go ahead and take  
04:16:37 3 down the blow-out, Mr. Groat? And flip forward through the  
04:16:41 4 article, please, Mr. Groat.

04:16:43 5 Q. (By Mr. Moore) And you're welcome to do the same in  
04:16:46 6 your binder. And the rest of the article is an interview  
04:16:50 7 by this publication with Mr. Araki where he's answering  
04:16:50 8 questions about GREE and its social mobile games, correct?

04:16:55 9 A. Correct.

04:16:56 10 MR. MOORE: All right. Now, could you go back to  
04:16:58 11 the first page, please, Mr. Groat? Again, blow up the top.

04:17:01 12 Q. (By Mr. Moore) Where you said see comments highlighted  
04:17:05 13 in red for the quick scan? All right. Could we go -- do  
04:17:05 14 you see that, sir?

04:17:06 15 A. Yes, I do.

04:17:07 16 Q. Thank you.

04:17:08 17 MR. MOORE: And can you go, please, to the second  
04:17:12 18 page now of PTX-607, and blow up that answer right there,  
04:17:16 19 the question and answer right there where your cursor is at  
04:17:20 20 the top, please, Mr. Groat? All the way to the top. Thank  
04:17:26 21 you. Right there.

04:17:27 22 Q. (By Mr. Moore) And one of the things you highlighted  
04:17:28 23 in red was part of Mr. Araki's answer to the question, what  
04:17:33 24 do you think makes social games so successful, social and  
04:17:38 25 profitable in Japan? Do you see that?

04:17:40 1 A. I do.

04:17:40 2 Q. And the statement you highlighted in red and shared

04:17:43 3 with the CEO and others at Supercell was: Not just gifting

04:17:48 4 or adding friends but competing or cooperating to achieve a

04:17:51 5 common goal. I believe deeply connected social features

04:17:54 6 encourage the player to continue to play with their friends

04:17:56 7 and pay money to compete against other players or help

04:18:00 8 their friends.

04:18:01 9 You highlight that -- those sentences, correct?

04:18:03 10 A. I did.

04:18:04 11 Q. You see the word "gifting" in in that sentence?

04:18:07 12 A. I do.

04:18:08 13 Q. And then in the next paragraph?

04:18:10 14 MR. MOORE: If you could -- you could go to the

04:18:11 15 next paragraph.

04:18:12 16 Q. (By Mr. Moore) You highlighted a sentence that says:

04:18:15 17 Japanese mobile-social games are much more advanced in

04:18:19 18 terms of how they integrate social features.

04:18:23 19 Correct?

04:18:23 20 A. Correct.

04:18:24 21 Q. And you highlighted that for the CEO and others at

04:18:27 22 Supercell?

04:18:27 23 A. Right.

04:18:27 24 Q. All right. Let's go back to the first page, please.

04:18:28 25 And your comment below the one we highlighted

04:18:31 1 says: It's all about social when it comes to LTV.

04:18:35 2 Is that right?

04:18:36 3 A. That's right.

04:18:37 4 Q. And LTV stands for lifetime value?

04:18:40 5 A. It does.

04:18:40 6 Q. And what lifetime value is, is the measure of value of

04:18:44 7 a player -- of a game player to a company over the lifespan

04:18:45 8 that the player is with the company, correct?

04:18:48 9 A. That's correct.

04:18:49 10 Q. In other words, the total amount of money the player

04:18:52 11 spends the entire time they're playing the games of that

04:18:55 12 company, right?

04:18:56 13 A. Well, there are a lot of different ways you can

04:18:58 14 calculate LTV, but that is one of them.

04:19:00 15 Q. Okay. But you wrote these words in an email to the CEO

04:19:03 16 and others at Supercell and hit send, right?

04:19:07 17 A. I did.

04:19:09 18 Q. Now, that's not the first time that someone from

04:19:12 19 Supercell noticed an article about GREE, is it?

04:19:15 20 A. I don't -- don't recall.

04:19:18 21 Q. Would you please turn to the tab marked PTX-637 in your

04:19:24 22 binder?

04:19:25 23 MR. MOORE: And, Mr. Groat, if we could put that

04:19:28 24 up on the screen, please?

04:19:29 25 THE COURT: And, Mr. Moore, could you slow down

04:19:32 1 just a little bit?

04:19:32 2 MR. MOORE: I will do that. Thank you,

04:19:32 3 Your Honor.

04:19:35 4 THE COURT: All right.

04:19:35 5 A. What was the tab?

04:19:37 6 Q. (By Mr. Moore) 637.

04:19:57 7 A. Okay.

04:19:57 8 Q. Now, this is an email you received from Mr. Paananen,  
04:20:00 9 the CEO, correct?

04:20:02 10 A. Correct.

04:20:02 11 Q. And the subject of the article is -- of the email is:  
04:20:07 12 Terrific article on GREE and the market in general.

04:20:10 13 Correct?

04:20:10 14 A. Oh, I'm sorry, I'm looking at the wrong one.

04:20:18 15 Q. Sure. It's 637. It's also on the screen.

04:20:22 16 A. Okay. I have it. Yes.

04:20:24 17 Q. Is that correct?

04:20:25 18 A. That's correct.

04:20:25 19 Q. Thank you.

04:20:27 20 And in the second sentence, Mr. Paananen's email  
04:20:32 21 to the -- well, strike that.

04:20:33 22 This is an email to the entire company at that  
04:20:36 23 time, right?

04:20:37 24 A. That's right.

04:20:38 25 Q. It says "all."

04:20:41 1 A. Yes.

04:20:41 2 Q. And in the second sentence of his email to the entire

04:20:44 3 country -- company, Mr. Paananen says: In short, this year

04:20:48 4 will be the most interesting in games ever, due to the

04:20:50 5 inevitable clash of giants on the development side, GREE,

04:20:55 6 DeNa, Zynga, EA, Nexon, Tencent.

04:21:01 7 Do you see that?

04:21:02 8 A. I do.

04:21:06 9 Q. And then he writes: BTW, let's hope that the CEO of

04:21:11 10 GREE is right here.

04:21:13 11 And includes some quotes from the article, right?

04:21:15 12 A. Right.

04:21:18 13 Q. Now, I think you said on your direct testimony that --

04:21:24 14 let me get the quote -- that Supercell doesn't look at

04:21:27 15 other companies, right? Did you say that on direct?

04:21:32 16 A. I believe I said we don't focus on other companies.

04:21:35 17 Q. Okay. Well, I had written down "look."

04:21:38 18 A. Okay.

04:21:38 19 Q. Maybe I wrote it wrong.

04:21:40 20 MR. MOORE: In any event, could we please put up

04:21:44 21 Plaintiff's Exhibit 625?

04:21:46 22 Q. (By Mr. Moore) And you may certainly look at that in

04:21:47 23 your binder, if you like, as well. Do you see that this is

04:21:59 24 another email from Mr. Paananen, the Supercell CEO?

04:22:01 25 A. I do.

04:22:02 1 Q. And he sends it to a few individuals, as well as a  
04:22:06 2 group called "biweekly," right?  
04:22:06 3 A. Right.  
04:22:09 4 Q. And you were on this email group at this time, weren't  
04:22:11 5 you?  
04:22:12 6 A. I was.  
04:22:12 7 Q. And you see the subject is walk-through: #1 game in  
04:22:18 8 Japan?  
04:22:18 9 A. Yes.  
04:22:18 10 Q. And the attachment includes an attachment named GREE,  
04:22:22 11 social game walk-through.  
04:22:24 12                   Correct?  
04:22:24 13 A. Correct.  
04:22:25 14 Q. And Mr. Paananen says: Wanted to share the enclosed  
04:22:29 15 walk-through of a top mobile social game in Japan. This  
04:22:32 16 game makes about \$25 million per month.  
04:22:37 17                   Do you see that?  
04:22:38 18 A. I do.  
04:22:38 19                   MR. MOORE: All right. And let's pull up one  
04:22:40 20 more, please, PTX-634. Now, let's go down a little bit,  
04:22:51 21 please, Mr. Groat, to the bottommost email there. If you'd  
04:22:57 22 please blow up the one from an individual named Riku  
04:23:03 23 Rikala. Right there -- you have. Thank you.  
04:23:04 24 Q. (By Mr. Moore) And Mr. Rikala was an employee of  
04:23:08 25 Supercell at the time of this document, correct?

04:23:10 1 A. Yes.

04:23:11 2 Q. And he's talking about a game released -- or created by

04:23:15 3 GREE's San Francisco's studio, right?

04:23:17 4 A. That's what it looks like, yes.

04:23:17 5 Q. A game named Zombie Jombie?

04:23:22 6 A. Yes.

04:23:23 7 Q. Okay.

04:23:23 8 MR. MOORE: Let's go up to the top, please. Keep

04:23:25 9 going a little bit more.

04:23:27 10 Q. (By Mr. Moore) And do you see that the topmost email

04:23:29 11 in the chain is from Mr. Paananen, the CEO?

04:23:32 12 A. Yes.

04:23:33 13 Q. All right. And he includes comments there such as in

04:23:42 14 the second line: This is like Zynga's Mafia Wars but on

04:23:49 15 steroids. Wow, with an exclamation point.

04:23:53 16 Correct?

04:23:53 17 A. Correct.

04:23:55 18 Q. All right.

04:23:55 19 MR. MOORE: Thank you, Mr. Groat. You may take

04:23:57 20 that down.

04:24:04 21 Q. (By Mr. Moore) Now, you talked a little bit about your

04:24:07 22 role in the dispute between GREE and Supercell as a board

04:24:10 23 member. Do you recall that?

04:24:11 24 A. I do.

04:24:12 25 Q. All right. But before I showed it to you at your

04:24:16 1 deposition back in April of this year, you had never seen  
04:24:19 2 the letter that GREE sent to Supercell in September of  
04:24:21 3 2016, had you?  
04:24:22 4 A. I don't recall seeing it.  
04:24:24 5 Q. And you didn't know then if it had been provided to you  
04:24:27 6 at any time, right?  
04:24:29 7 A. That was several years ago. I just didn't recall.  
04:24:32 8 Q. Now, you are not aware of any actions that Supercell  
04:24:36 9 took to make sure that it wasn't infringing GREE's patents  
04:24:40 10 after it got this letter, are you?  
04:24:43 11 A. I don't recall.  
04:24:45 12 Q. Okay. In fact, when I asked you, what did Supercell do  
04:24:48 13 after Mr. Paananen reviewed this letter, you said: I don't  
04:24:53 14 know.  
04:24:53 15 Right?  
04:24:53 16 A. I -- I don't recall.  
04:24:55 17 Q. Okay. And you also didn't remember ever talking about  
04:24:59 18 the letter with Mr. Paananen, did you?  
04:25:02 19 A. I -- I don't recall.  
04:25:05 20 Q. All right.  
04:25:05 21 MR. MOORE: Could we -- just for the record, could  
04:25:08 22 you pull up, please, PTX-105?  
04:25:11 23 Q. (By Mr. Moore) And this is a letter that we discussed  
04:25:16 24 at your deposition, correct?  
04:25:18 25 A. I don't remember.

04:25:33 1 Q. And you -- you don't recall -- at your deposition, you  
04:25:39 2 didn't recall ever talking about the lawsuits between GREE  
04:25:41 3 and Supercell with the Supercell leadership team, right?

04:25:44 4 A. At the deposition, no.

04:25:45 5 Q. And the leadership team is you; the CEO, Mr. Paananen;  
04:25:50 6 and the COO/CFO, Mr. Snellman, right?

04:25:57 7 A. That's right.

04:25:58 8 Q. In fact in 26 -- well, strike that.

04:26:02 9 After Supercell received this letter from GREE,  
04:26:06 10 you personally didn't bother to read any of the patents  
04:26:09 11 listed in this letter, did you?

04:26:10 12 A. I don't recall if I read them or not.

04:26:12 13 Q. Okay. And almost four years after this letter, at the  
04:26:15 14 time of your deposition for this case, you still had not  
04:26:17 15 reviewed any of the -- the five United States patents that  
04:26:21 16 GREE is asserting against Supercell in this lawsuit,  
04:26:24 17 correct?

04:26:24 18 THE COURT: Slow down, Mr. Moore.

04:26:26 19 MR. MOORE: Thank you, sir.

04:26:27 20 THE COURT: I'll stop reminding you when you start  
04:26:30 21 doing it.

04:26:32 22 Answer the question, please, Mr. Harper.

04:26:35 23 THE WITNESS: Yes, sir.

04:26:36 24 A. I don't recall if I reviewed them at the time or not.  
04:26:38 25 I may have.

04:26:39 1 Q. (By Mr. Moore) When I asked you at your deposition,  
04:26:43 2 have you ever seen any of the United States patents that  
04:26:46 3 GREE is asserting in this lawsuit against Supercell, your  
04:26:51 4 answer was: Not to my knowledge.

04:26:52 5 Isn't that right?

04:26:56 6 A. I don't recall what my exact answer was, but if you say  
04:26:58 7 it was "not to my knowledge"...

04:27:02 8 Q. Okay.

04:27:03 9 MR. MOORE: Let's -- can we please pull up the  
04:27:06 10 transcript to refresh the witness's memory from the April  
04:27:09 11 24th deposition at Page 84?

04:27:11 12 Q. (By Mr. Moore) There is a copy in your binder, sir, if  
04:27:15 13 you'd like to review there.

04:27:28 14 MR. SACKSTEDER: Your Honor, are we publishing  
04:27:29 15 this to the jury if it's being used to refresh his  
04:27:32 16 recollection?

04:27:38 17 THE COURT: What's the purpose of this segment of  
04:27:40 18 his prior deposition testimony, Mr. Moore?

04:27:42 19 MR. MOORE: At this point I would like to simply  
04:27:45 20 refresh his recollection, so I have no objection to not  
04:27:48 21 publishing it until he does that.

04:27:48 22 THE COURT: It's in his binder?

04:27:49 23 MR. MOORE: It is, sir, yes.

04:27:50 24 THE COURT: Refer him to the binder without  
04:27:53 25 publishing it on the screen, please.

04:27:55 1 MR. MOORE: Okay.

04:27:55 2 Q. (By Mr. Moore) If you could go in your binder to

04:27:57 3 Page 84, Lines 9 to 13, please.

04:28:04 4 A. I'm sorry, Page?

04:28:06 5 Q. 84?

04:28:19 6 A. Okay.

04:28:19 7 Q. Having read that question and answer, does that refresh

04:28:22 8 your memory as to what your response was at your

04:28:24 9 deposition?

04:28:24 10 A. Well, I see -- I see my response there, yes.

04:28:29 11 Q. And what was it?

04:28:29 12 A. "Not to my knowledge."

04:28:31 13 Q. Okay. Now, you are aware of the litigation that

04:28:42 14 happened between GREE and Supercell in Japan, correct?

04:28:44 15 A. Correct.

04:28:44 16 Q. All right. Did you have any involvement with that

04:28:50 17 litigation?

04:28:51 18 A. At the board level, approving the final resolution of

04:28:55 19 it.

04:28:56 20 Q. Okay. Do you recall that I asked you that same

04:29:00 21 question at your deposition?

04:29:03 22 A. I don't recall.

04:29:04 23 Q. Okay.

04:29:05 24 MR. MOORE: Your Honor, I would like to play the

04:29:08 25 clip, please, from the deposition for impeachment purposes,

04:29:13 1 rather than refreshing.

04:29:15 2 THE COURT: Why don't you proceed. If there's an  
04:29:16 3 objection, I'll hear the objection when it's presented.

04:29:19 4 Q. (By Mr. Moore) Okay. Could you please --

04:29:22 5 MR. SACKSTEDER: Your Honor, may I see the -- hear  
04:29:24 6 the page and line numbers first?

04:29:25 7 MR. MOORE: Yes. It is 76, Line 8.

04:29:37 8 MR. SACKSTEDER: Which deposition?

04:29:43 9 MR. MOORE: 8.

04:30:04 10 MR. SACKSTEDER: Your Honor, I don't think this  
04:30:05 11 addresses the question and answer that was asked  
04:30:12 12 previously.

04:30:12 13 THE COURT: Well, I don't have the benefit of it  
04:30:14 14 before me.

04:30:21 15 Ladies and gentlemen, I'm going to ask you to  
04:30:24 16 retire to the jury room for a minute. I need to discuss  
04:30:26 17 this in greater detail with counsel. I'll have you back in  
04:30:29 18 just a minute. And I'll be in a position to give them some  
04:30:32 19 guidance on how we should proceed.

04:30:34 20 Please leave your notebooks in your chairs, don't  
04:30:36 21 discuss the case with each other, and I'll have you back in  
04:30:39 22 here as soon as possible.

04:30:40 23 The jury should retire to the jury room now.

04:30:43 24 COURT SECURITY OFFICER: All rise.

04:31:07 25 (Jury out.)

04:31:08 1 THE COURT: Be seated.

04:31:09 2 All right. What are we trying to do here,

04:31:11 3 gentlemen?

04:31:12 4 MR. MOORE: Your Honor, may we excuse the witness

04:31:14 5 while we discuss? Would that be appropriate?

04:31:18 6 THE COURT: That's probably appropriate.

04:31:21 7 Mr. Harper, I'm going to ask you to step outside

04:31:24 8 the courtroom. If you'll exit through the double doors,

04:31:28 9 but don't go far, sir.

04:31:29 10 THE WITNESS: Yes, sir.

04:31:30 11 THE COURT: Stay close by.

04:31:47 12 All right. Mr. Moore, what are you trying to do,

04:31:50 13 are you trying to refresh the recollection of the witness

04:31:53 14 or are you trying to impeach the witness?

04:31:54 15 MR. MOORE: To impeach, Your Honor, because he

04:31:56 16 gave a different answer than he did at his deposition.

04:31:59 17 THE COURT: Well, let me just be real

04:32:01 18 straightforward with you, the way you impeach a witness is

04:32:03 19 you call the prior inconsistent statement to their

04:32:06 20 attention without publishing it. You inquire of the

04:32:10 21 witness, did you make this statement? If it's a

04:32:13 22 deposition, were you under oath?

04:32:14 23 You confirm that the precise statement is, in

04:32:16 24 fact, a prior, accurate, inconsistent statement. Once

04:32:21 25 that's confirmed, then you publish it to the jury to show

04:32:23 1 the inconsistency. That's not how it's been done this  
04:32:28 2 entire trial. But that's the way I expect it to be done on  
04:32:32 3 both sides going forward.

04:32:32 4 MR. MOORE: I understand, Your Honor. And that's  
04:32:34 5 how I typically do it. That's exactly why I asked the  
04:32:37 6 question because opposing counsel has not done that. And  
04:32:39 7 so I wanted to make sure --

04:32:42 8 THE COURT: Well, you haven't -- you haven't  
04:32:44 9 objected to it. So while we have this learning moment with  
04:32:47 10 everybody present, I'm going to make it clear that's how I  
04:32:51 11 expect it to be done on both sides going forward.

04:32:53 12 MR. MOORE: So -- just so I'm clear, and it's in  
04:32:56 13 addition to asking him if it was -- at his deposition if  
04:32:58 14 that's what he said, would you want me to have him read the  
04:33:01 15 prior testimony before we display it out loud or simply  
04:33:05 16 read it to himself and establish the inconsistency?

04:33:08 17 THE COURT: If it's in his binder and it's his  
04:33:11 18 prior deposition, then you should in that case call it to  
04:33:13 19 his attention by page and line number, ask him to read it,  
04:33:17 20 ask to himself, ask him to let you know when he has  
04:33:22 21 completed that.

04:33:23 22 When he tells you he has, confirm for him that at  
04:33:27 23 that time, date, and place, is it correct that you made --  
04:33:29 24 that you gave those answers to those questions under oath?

04:33:32 25 And then if he confirms that, in fact, it is his

04:33:35 1 testimony, then you can publish it for -- to the jury for  
04:33:39 2 purposes of impeachment.

04:33:40 3 MR. MOORE: Thank you. And in this --

04:33:42 4 MR. SACKSTEDER: Your Honor --

04:33:43 5 MR. MOORE: In this instance, I would propose to  
04:33:45 6 do -- I would do so by video.

04:33:48 7 THE COURT: If it's -- you need to refer him to  
04:33:51 8 his written transcript --

04:33:52 9 MR. MOORE: Yes.

04:33:53 10 THE COURT: -- to confirm it. If you have a video  
04:33:56 11 recording of the deposition rather than publishing the  
04:33:59 12 written transcript, you're at liberty to publish the clip  
04:33:59 13 from the video deposition that corresponds with that  
04:34:05 14 section of the transcript.

04:34:05 15 MR. MOORE: Understood.

04:34:05 16 THE COURT: Mr. Sacksteder.

04:34:09 17 MR. SACKSTEDER: Thank you, Your Honor. My issue  
04:34:10 18 is that I don't -- I don't think this is the same question  
04:34:12 19 and answer that is being impeached. And maybe I heard --  
04:34:16 20 heard the question incorrectly.

04:34:20 21 THE COURT: Well, it wouldn't be the first time  
04:34:22 22 I've seen a lawyer impeach somebody with something that  
04:34:26 23 didn't turn out to be a prior inconsistent statement. But  
04:34:29 24 I'm not going to micromanage you or opposing counsel to  
04:34:32 25 choose what you think might be an effective impeachment

04:34:37 1 inconsistent statement.

04:34:38 2 MR. SACKSTEDER: Okay. Your Honor. It's fine and  
04:34:39 3 I looked at it -- and I think the question is very close,  
04:34:42 4 if not identical.

04:34:43 5 THE COURT: That's fine.

04:34:44 6 MR. SACKSTEDER: There's no answer really.

04:34:46 7 It's -- the witness didn't understand the question.

04:34:48 8 THE COURT: And while we're at this juncture, let  
04:34:50 9 me just make it very clear -- and this has been a problem  
04:34:54 10 that I have not mentioned heretofore throughout this trial,  
04:34:58 11 but I'll mention it now.

04:35:00 12 When the Court begins to speak, counsel should be  
04:35:03 13 quiet. There's been too much talking over the Court when I  
04:35:07 14 try to interject and either give you instruction or address  
04:35:11 15 something.

04:35:12 16 So when I start talking, whoever has been talking  
04:35:16 17 should stop immediately. That -- that will promote greater  
04:35:20 18 clarity in the record, and it will be much more efficient.  
04:35:23 19 And it will comport with the proper decorum in this  
04:35:27 20 courtroom. So I expect that.

04:35:30 21 All right. Are there questions about refreshing  
04:35:33 22 the recollection of the witness, because, quite honestly, I  
04:35:36 23 couldn't tell if you were trying to do that or you were  
04:35:38 24 trying to impeach him.

04:35:40 25 MR. MOORE: The first one I was trying to refresh,

04:35:42 1 Your Honor, and that's what I was doing. This one I think  
04:35:44 2 it's a straight impeachment.

04:35:45 3 THE COURT: Well, unless -- just to avoid any  
04:35:48 4 doubt, you don't refresh their recollection by publishing  
04:35:51 5 the document that's refreshing to the jury first. You do  
04:35:53 6 it much like the impeachment. You call their attention to  
04:35:57 7 it and ask them to review it, tell you when they have, and  
04:36:01 8 then ask them if that refreshes their recollection.

04:36:04 9 And if they say it does and then they give you an  
04:36:07 10 inconsistent statement, then you can proceed to impeach  
04:36:10 11 them.

04:36:10 12 MR. MOORE: Understood.

04:36:11 13 THE COURT: All right. Is there anything else we  
04:36:13 14 need to take up while the jury is out of the courtroom and  
04:36:16 15 the witness is off the witness stand?

04:36:18 16 Anything from you, Mr. Sacksteder?

04:36:21 17 MR. SACKSTEDER: No, Your Honor.

04:36:22 18 THE COURT: Anything further from you, Mr. Moore?

04:36:24 19 MR. MOORE: No, Your Honor.

04:36:24 20 THE COURT: All right. Let's ask Mr. Harper to  
04:36:29 21 return.

04:36:29 22 (The witness returns to the stand.)

04:36:37 23 THE COURT: Thank you for your indulgence,  
04:36:40 24 Mr. Harper. If you'd return to the witness stand, please.  
04:36:47 25 And I'll remind you that you remain under oath.

04:36:49 1 Once he's seated, I'll ask the Court Security  
04:36:52 2 Officer to bring the jury back in.

04:36:54 3 COURT SECURITY OFFICER: All rise.

04:36:56 4 (Jury in.)

04:37:23 5 THE COURT: Thank you, ladies and gentlemen.

04:37:34 6 Please be seated.

04:37:34 7 For purposes of clarity, I'm overruling any  
04:37:37 8 objection from the Defense that led to me asking you to  
04:37:42 9 step out.

04:37:42 10 Mr. Moore, proceed with either your next question  
04:37:46 11 or pursue the line you were on at the time this issue  
04:37:50 12 arose.

04:37:51 13 MR. MOORE: Thank you, Your Honor.

04:37:51 14 Q. (By Mr. Moore) Mr. Harper, before we took the brief  
04:37:55 15 break, you had said that you were aware of the litigation  
04:37:58 16 in Japan between GREE and Supercell, correct?

04:38:00 17 A. Correct.

04:38:01 18 Q. And when I asked you did you have any involvement with  
04:38:04 19 litigation, you said you were aware of it through your role  
04:38:08 20 on the board of directors, correct?

04:38:10 21 A. Correct.

04:38:13 22 Q. All right. You recall the deposition that you gave in  
04:38:15 23 April of this year where I asked you questions?

04:38:18 24 A. Deposition was like six hours. I remember it took  
04:38:22 25 place. I don't remember all the details.

04:38:25 1 Q. Okay. And, as I mentioned, you have a copy of your  
04:38:28 2 transcript from that deposition in your binder. Would you  
04:38:30 3 please turn to that, sir?  
04:38:32 4 A. Where would you like me to turn?  
04:38:35 5 Q. Please turn to Page 76 at Line 8. And beginning at  
04:38:41 6 Line -- read please beginning at Line 8 through the rest of  
04:38:46 7 that page and on to Line 2 of the following page. Please  
04:38:50 8 just let me know when you're finished.  
04:38:52 9 A. So this -- Page 76, you said?  
04:38:56 10 Q. That's correct.  
04:38:57 11 A. Line 8. Did you have --  
04:38:59 12 Q. No. Sorry. To yourself. I'm sorry.  
04:39:01 13 A. Oh, I'm sorry. I'm sorry. How far did you want?  
04:39:38 14 Q. To page -- Line 2 on the following Page 77. Have you  
04:39:43 15 read that now?  
04:39:44 16 A. Yep.  
04:39:45 17 Q. And you recall you were given an oath at the beginning  
04:39:48 18 of that deposition much like you were here today?  
04:39:50 19 A. I do.  
04:39:50 20 Q. And that was the testimony that you gave at that  
04:39:53 21 deposition that you just read to yourself; is that right?  
04:39:55 22 A. Yes.  
04:39:56 23 Q. Your Honor, we would like to play the clip, please.  
04:40:00 24 MR. MOORE: Mr. Groat?  
04:40:07 25 (Videoclip played.)

04:40:08 1                   QUESTION: Are you aware of litigation that  
04:40:10 2 happened between GREE and Supercell in Japan?  
04:40:10 3                   ANSWER: Yes.  
04:40:16 4                   QUESTION: Did you have any involvement with that  
04:40:18 5 litigation?  
04:40:19 6                   ANSWER: What do you mean by involvement?  
04:40:26 7                   QUESTION: What is unclear about that to you?  
04:40:32 8                   ANSWER: The definition.  
04:40:42 9                   QUESTION: Okay. You need me to further clarify  
04:40:44 10 what I mean by involvement?  
04:40:48 11                   ANSWER: If you want me to answer the question.  
04:40:55 12                   QUESTION: All right. What did you do regarding  
04:40:57 13 the GREE and Supercell litigation in Japan?  
04:41:08 14                   ANSWER: What did I do? Yeah, I don't understand  
04:41:12 15 what did I do.  
04:41:14 16                   (Videoclip ends.)  
04:41:15 17                   MR. MOORE: Thank you.  
04:41:15 18 Q. (By Mr. Moore) And that was your testimony at the  
04:41:17 19 deposition, correct?  
04:41:18 20 A. Correct.  
04:41:18 21 Q. Thank you.  
04:41:19 22                   Now, you also testified on direct that you were  
04:41:23 23 familiar with and aware of the license agreement between  
04:41:26 24 GREE and Supercell relating to GREE's Japanese patents,  
04:41:31 25 correct?

04:41:31 1 A. Correct.

04:41:31 2 Q. And I think you told me that -- why the board -- or you

04:41:36 3 told us why the board of directors approved that license,

04:41:38 4 didn't you?

04:41:38 5 A. I did.

04:41:41 6 Q. But at your deposition, you testified that you don't

04:41:44 7 recall -- you didn't recall being aware of a license

04:41:47 8 agreement between GREE and Supercell relating to GREE's

04:41:51 9 Japanese patents, didn't you?

04:41:53 10 A. I don't recall what my exact testimony at deposition

04:41:58 11 was about my awareness. But if it's in here, I'm happy to

04:42:02 12 look at it.

04:42:02 13 Q. Please do. Please go to Page 89 of your April

04:42:06 14 deposition.

04:42:10 15 A. Okay.

04:42:10 16 Q. And read Lines 2 to 6 to yourself, and let me know when

04:42:14 17 you're finished.

04:42:14 18 A. Okay.

04:42:30 19 Q. Does that now refresh your recollection as to your

04:42:36 20 testimony at that deposition about whether you recall being

04:42:39 21 aware of the license agreement?

04:42:41 22 A. That looks like my testimony, yeah.

04:42:43 23 Q. Would you please read it aloud?

04:42:48 24 A. Starting at Line 2?

04:42:49 25 Q. Yes, and you can skip Line 5. Would you please read

04:42:53 1 the question, Lines 2 to 4 and your answer at Line 6?

04:42:56 2 A. Are you aware -- are you aware of the license agreement

04:42:59 3 between GREE and Supercell relating to GREE's Japanese

04:43:05 4 patents portfolio?

04:43:06 5 I don't recall.

04:43:07 6 Were you ever --

04:43:07 7 Q. That's fine. You can stop there. So you did not

04:43:10 8 recall in April anything about the license agreement,

04:43:13 9 correct?

04:43:13 10 A. Correct.

04:43:13 11 Q. And you also didn't know then anything about why

04:43:17 12 Supercell decided to enter into that agreement when I asked

04:43:20 13 you that question at your deposition, did you?

04:43:22 14 A. Is that here, as well?

04:43:29 15 Q. I'm asking you the question.

04:43:30 16 A. I thought you were asking me about the deposition. So

04:43:34 17 if it's here, I'm happy to review it again.

04:43:37 18 THE COURT: All right. Restate the question.

04:43:38 19 MR. MOORE: Thank you.

04:43:39 20 THE COURT: And, Mr. Harper, either answer the

04:43:41 21 question, or tell counsel you don't understand the

04:43:44 22 question, okay?

04:43:45 23 THE WITNESS: Okay.

04:43:45 24 THE COURT: Restate your question, Mr. Moore.

04:43:47 25 MR. MOORE: Thank you. Thank you, Your Honor.

04:43:48 1 Q. (By Mr. Moore) You told me at your April deposition  
04:43:52 2 that you didn't know why Supercell decided to enter into  
04:43:58 3 the license agreement with GREE relating to Japanese  
04:44:01 4 patents; isn't that true, sir?

04:44:03 5 A. I don't recall what I told you in the deposition.

04:44:05 6 Q. All right. Let's go back to Page 89 of your  
04:44:08 7 deposition, please. And read from Line 24 on that page  
04:44:16 8 through Line 4 on Page 90.

04:44:36 9 A. Okay.

04:44:36 10 Q. Does that refresh your testimony as to what you -- as  
04:44:40 11 to what you said at the deposition on this topic?

04:44:42 12 A. That looks like my testimony, yeah.

04:44:45 13 Q. All right. Please read it aloud. You can skip Lines 2  
04:44:47 14 and 3.

04:44:47 15 A. Do you have any knowledge of why Supercell decided to  
04:44:51 16 enter into any license agreement with GREE relating to  
04:44:53 17 Japanese patents?

04:44:54 18           Yeah, I don't know.

04:44:57 19 Q. And that's what you told me under oath in April when I  
04:45:01 20 took your deposition, right?

04:45:02 21 A. Right.

04:45:03 22 Q. Okay. Now, you also didn't remember at that deposition  
04:45:09 23 whether the board of directors of Supercell was even asked  
04:45:13 24 to approve the license, correct?

04:45:16 25 A. I'd like to review the testimony again. I can't

04:45:21 1 recall.

04:45:22 2 Q. So you can't recall whether you did recall or not?

04:45:24 3 A. I can't recall what I said in the deposition.

04:45:27 4 Q. All right. Let's do it one more time.

04:45:29 5 Please go, again, to Page 89, this time starting  
04:45:33 6 at Line 8, and read through Line 16 to yourself. And let  
04:45:36 7 me know when you're finished.

04:45:38 8 A. Okay.

04:45:52 9 Q. Does that refresh your memory as to what you told me  
04:45:55 10 back in your deposition last April on this topic?

04:45:58 11 A. Yeah, that looks like my testimony.

04:46:00 12 Q. Okay. Would you please read aloud my question at  
04:46:04 13 Line 8 --

04:46:04 14 THE COURT: No, no, no. You've refreshed his  
04:46:07 15 recollection. Now ask him your question again. Don't have  
04:46:10 16 him read the transcript.

04:46:11 17 MR. MOORE: Okay.

04:46:12 18 Q. (By Mr. Moore) Mr. Harper, at your deposition in  
04:46:13 19 April, you didn't recall whether the board of directors of  
04:46:19 20 Supercell had been asked to approve the license agreement  
04:46:24 21 between GREE and Supercell in Japan, correct?

04:46:26 22 A. Based on my deposition, it looks like -- that looks  
04:46:30 23 right.

04:46:31 24 Q. All right. Thank you.

04:46:36 25 Now, Mr. Harper, I want to ask you about somewhat

04:46:38 1 of a hypothetical scenario and I -- because I understand  
04:46:40 2 that you have two -- two residences, right?  
04:46:43 3 A. I do.  
04:46:44 4 Q. Okay. Now, let's imagine a scenario where you and your  
04:46:50 5 family are staying at one of those residences, but you're  
04:46:53 6 not using the other one. Are you with me?  
04:46:55 7 A. Okay.  
04:46:57 8 Q. All right. No one is there, but you still own that --  
04:46:59 9 that other second property that you're not using, right?  
04:47:04 10 A. Okay.  
04:47:05 11 Q. Okay. And let's say you've got some valuable  
04:47:07 12 possessions in that house, okay? Are you with me still?  
04:47:14 13 A. I am.  
04:47:14 14 Q. All right. Now, imagine that somebody goes to that  
04:47:17 15 second property that you're not using and trespasses on it  
04:47:20 16 by starting to live there without your permission. You  
04:47:22 17 understand that?  
04:47:22 18 MR. SACKSTEDER: Objection, Your Honor. This is  
04:47:24 19 seeking speculation, is asking an opinion question of a  
04:47:29 20 fact witness, and is an improper hypothetical.  
04:47:36 21 THE COURT: What's your response, Mr. Moore?  
04:47:37 22 MR. MOORE: I think it's entirely proper to -- to  
04:47:41 23 ask the person who's testifying as the face of Supercell  
04:47:44 24 about this because it relates directly to Supercell's  
04:47:47 25 arguments in this case, by analogy.

04:47:49 1 THE COURT: I'll allow a hypothetical. I'll  
04:47:52 2 overrule the objection.

04:47:58 3 Q. (By Mr. Moore) Okay. So, to recap, we've got your  
04:48:00 4 other residence, you're not there, someone else is living  
04:48:03 5 there while you're away, correct?

04:48:07 6 A. Okay.

04:48:08 7 Q. All right. Now, if you found that out and you wanted  
04:48:11 8 to sue the person for trespassing, it wouldn't be a defense  
04:48:15 9 for them to say, well, Mr. Harper wasn't living there so it  
04:48:19 10 doesn't matter that I used it without permission, would it?

04:48:23 11 A. No.

04:48:24 12 Q. Okay. That's not a defense to trespass, right?

04:48:27 13 A. I don't know --

04:48:29 14 THE COURT: Are you asking him a legal conclusion,  
04:48:32 15 counselor?

04:48:33 16 MR. MOORE: I'll move on, Your Honor.

04:48:34 17 THE COURT: Let's move on.

04:48:36 18 Q. (By Mr. Moore) And the same is true in patent law,  
04:48:38 19 right?

04:48:38 20 A. I don't -- I don't know patent law.

04:48:41 21 Q. Okay.

04:48:43 22 THE COURT: You have an objection?

04:48:44 23 MR. SACKSTEDER: Yes, Your Honor.

04:48:45 24 THE COURT: State your objection.

04:48:46 25 MR. SACKSTEDER: He's seeking a legal conclusion

04:48:50 1 from a witness.

04:48:52 2 THE COURT: Sustained.

04:48:53 3 Let's move on.

04:48:54 4 Q. (By Mr. Moore) Do you believe that Supercell --

04:48:56 5 that -- strike that.

04:48:57 6 Do you believe it's okay for Supercell to infringe

04:49:01 7 GREE's patents merely because GREE is not using the

04:49:05 8 inventions in the United States?

04:49:06 9 A. I don't believe we've infringed patents.

04:49:18 10 Q. All right. But do you believe that if the jury were to

04:49:20 11 disagree with you, that an excuse would be, well, it's

04:49:23 12 okay, we can do that, because GREE is not using the patents

04:49:26 13 in the United States?

04:49:30 14 A. I'm sorry, restate the question.

04:49:33 15 Q. If the jury were to disagree with you on that question,

04:49:36 16 do you believe that an excuse for that would be to say it's

04:49:40 17 okay because GREE is not using those patents in the United

04:49:44 18 States?

04:49:44 19 A. I assume the jury has the final word, so I don't know

04:49:48 20 if excuses matter.

04:49:51 21 Q. Thank you, sir.

04:49:52 22 MR. MOORE: I'll pass the witness.

04:49:53 23 THE COURT: Redirect?

04:49:57 24 MR. SACKSTEDER: Thank you, Your Honor.

04:49:57 25 REDIRECT EXAMINATION

04:49:58 1 BY MR. SACKSTEDER:

04:49:58 2 Q. Mr. Harper, may I ask you about one thing that  
04:50:04 3 Mr. Moore asked you?

04:50:05 4 He asked you about Mr. Ostler being here as the  
04:50:11 5 company representative at the counsel table instead of you.  
04:50:14 6 You remember that?

04:50:15 7 A. I do.

04:50:15 8 Q. Why is Mr. Ostler here instead of you?

04:50:18 9 A. So Jeff Ostler is essentially my right hand at the  
04:50:24 10 company, and he handles many important matters for us, such  
04:50:27 11 as representing us here at the trial, but I trust him  
04:50:31 12 completely.

04:50:33 13 MR. SACKSTEDER: Pass the witness.

04:50:34 14 THE COURT: Further cross-examination?

04:50:35 15 MR. MOORE: No, Your Honor.

04:50:38 16 THE COURT: All right. You may step down,  
04:50:39 17 Mr. Harper.

04:50:40 18 Is there a request for this witness to be excused?

04:50:50 19 MR. SACKSTEDER: Yes, Your Honor.

04:50:51 20 THE COURT: Is there objection?

04:50:52 21 MR. MOORE: No objections, Your Honor.

04:50:53 22 THE COURT: Mr. Harper, you're excused. That  
04:50:55 23 means you're free to leave if you'd like. You're also free  
04:50:58 24 to stay. It's up to you.

04:51:01 25 All right. Defendants, proceed with your next

04:51:04 1 witness.

04:51:04 2 MR. SACKSTEDER: Supercell calls Jon Franzas by  
04:51:09 3 video.

04:51:09 4 THE COURT: Video deposition?

04:51:11 5 MR. SACKSTEDER: That's correct. Well, it's video  
04:51:13 6 trial deposition.

04:51:14 7 THE COURT: Right. Proceed.

04:51:16 8 (Videoclip played.)

04:51:17 9 QUESTION: Hello, Mr. Franzas. Can you please  
04:51:28 10 state your full name for the record?

04:51:28 11 ANSWER: Hello. My name is Jon Franzas.

04:51:33 12 QUESTION: And where are you testifying from  
04:51:35 13 today, Mr. Franzas?

04:51:36 14 ANSWER: From Helsinki, Finland.

04:51:38 15 QUESTION: And why are you testifying from Finland  
04:51:40 16 today?

04:51:42 17 ANSWER: Because of the COVID situation, so  
04:51:46 18 there's a lot of travel restrictions and bans around the  
04:51:51 19 world, so it would have been almost impossible for me to  
04:51:55 20 come there.

04:51:55 21 QUESTION: Where do you work, Mr. Franzas?

04:51:58 22 ANSWER: I work at Supercell.

04:51:59 23 QUESTION: And how long you have worked at  
04:52:01 24 Supercell?

04:52:01 25 ANSWER: Around nine years.

04:52:05 1                   QUESTION: What is your current game -- or current  
04:52:08 2 job title?

04:52:10 3                   ANSWER: My job title is senior game programmer.

04:52:14 4                   QUESTION: Have you worked on a game called Brawl  
04:52:18 5 Stars?

04:52:18 6                   ANSWER: Yes, I have.

04:52:19 7                   QUESTION: Are you currently on the Brawl Stars  
04:52:22 8 team?

04:52:23 9                   ANSWER: No, I'm not. I -- I left the team  
04:52:26 10 roughly a year ago, I believe.

04:52:28 11                   QUESTION: So while you were on that Brawl Stars  
04:52:30 12 team, what was your goal on the team?

04:52:38 13                   (Videoclip ends.)

04:52:40 14                   MR. DACUS: Your Honor?

04:52:40 15                   THE COURT: Yes.

04:52:40 16                   MR. DACUS: We had the deposition paused.

04:52:42 17 Mr. Sacksteder and I realized that there is source code  
04:52:45 18 information that is discussed during the course of this  
04:52:48 19 deposition. And consistent with the Court's practice and  
04:52:50 20 procedure, we would ask that the Court seal the courtroom.

04:52:53 21                   THE COURT: All right. Then based on counsel's  
04:52:55 22 request, I'll order the courtroom sealed.

04:52:58 23                   Anyone present who's not subject to the protective  
04:53:01 24 order that's been entered in this case should excuse  
04:53:03 25 themselves until the courtroom is unsealed.

04:53:11 1 MR. DACUS: Thank you, Your Honor.

04:53:12 2 THE COURT: And, counsel, I'll rely on you to make

04:53:15 3 sure as you look around the room there's nobody that falls

04:53:17 4 within this who has not exited.

04:53:21 5 (Courtroom sealed.)

04:53:21 6 (This portion of the transcript is sealed.

04:53:21 7 and filed under separate cover as

04:53:21 8 Sealed Portion No. 2.)

05:25:00 9 (Courtroom unsealed.)

05:25:01 10 THE COURT: Ladies and gentlemen, we have one more

05:25:01 11 deposition we need to cover today. It's going to take

05:25:02 12 about 20 minutes, but we're going to take about a 10-minute

05:25:04 13 recess. Then we'll come back, we'll do this remaining

05:25:07 14 deposition for about 20 minutes, and that should finish us

05:25:11 15 for the day.

05:25:11 16 If you will close your notebooks and leave them in

05:25:14 17 your chairs, follow all my instructions, and we'll be back

05:25:17 18 in 10 minutes, and we'll continue at that time.

05:25:20 19 The Court stands in recess.

05:25:22 20 COURT SECURITY OFFICER: All rise.

05:25:24 21 (Jury out.)

05:25:25 22 THE COURT: The Court stands in recess.

05:34:52 23 (Recess.)

05:34:54 24 (Jury out.)

05:34:55 25 COURT SECURITY OFFICER: All rise.

05:34:56 1 THE COURT: Be seated, please.

05:34:58 2 Defendants, who is your next witness?

05:35:06 3 MR. SACKSTEDER: Supercell calls Lauri Ahlgren --

05:35:12 4 or that is our next witness. I don't see a jury over

05:35:15 5 there.

05:35:16 6 THE COURT: This is by trial deposition?

05:35:18 7 MR. SACKSTEDER: Yes, that's correct, Your Honor.

05:35:20 8 THE COURT: And approximately 20 minutes?

05:35:22 9 MR. SACKSTEDER: I believe so. Our -- our portion

05:35:25 10 is 16.

05:35:25 11 THE COURT: All right.

05:35:26 12 MR. SACKSTEDER: And I think they've cut some of

05:35:29 13 theirs down.

05:35:30 14 THE COURT: All right. This will probably be our

05:35:33 15 last witness for the day.

05:35:34 16 Let's bring in the jury, please.

05:35:37 17 COURT SECURITY OFFICER: All rise.

05:35:38 18 (Jury in.)

05:36:04 19 THE COURT: Please be seated.

05:36:05 20 Defendant, call your next witness.

05:36:11 21 MR. SACKSTEDER: Thank you, Your Honor.

05:36:12 22 Supercell calls Lauri Ahlgren. And the deposition

05:36:16 23 will include Exhibits PX-75, PX-131, PX-133, and PX-142.

05:36:24 24 THE COURT: All right. Proceed with this witness.

05:36:27 25 (Videoclip played.)

05:36:30 1                   QUESTION: Hello, Mr. Ahlgren. Would you please  
05:36:36 2 state your name for the jury?  
05:36:37 3                   ANSWER: So Lauri Ahlgren, L-a-u-r-i  
05:36:40 4 A-h-l-g-r-e-n.  
05:36:40 5                   QUESTION: Who is your current employer?  
05:36:42 6                   ANSWER: My current employer is Supercell.  
05:36:45 7                   QUESTION: And what is your role within Supercell?  
05:36:47 8                   ANSWER: My role is the game lead of Clash Royale.  
05:36:52 9                   QUESTION: And where are you located?  
05:36:55 10                  ANSWER: I'm located in Helsinki, Finland.  
05:36:58 11                  QUESTION: Where are you testifying from today?  
05:36:59 12                  ANSWER: I'm testifying from Helsinki, Finland.  
05:37:01 13                  QUESTION: And why is that?  
05:37:03 14                  ANSWER: It's because of the COVID-19 situation,  
05:37:07 15 so, basically, it's -- it's not possible to travel --  
05:37:10 16 travel from Finland to Texas.  
05:37:12 17                  QUESTION: What does game lead mean?  
05:37:15 18                  ANSWER: A game lead means that I'm basically  
05:37:22 19 responsible for the team that is developing Clash Royale  
05:37:27 20 and also sort of like a vision holder of the game.  
05:37:30 21                  QUESTION: Briefly, what other jobs did you have  
05:37:32 22 before joining Supercell?  
05:37:33 23                  ANSWER: I used to work in the film industry. I  
05:37:36 24 started my own production company first, and then actually  
05:37:43 25 a digital advertising agency. And after that, I joined

05:37:47 1 Supercell.

05:37:47 2 QUESTION: What made you switch to the mobile  
05:37:49 3 gaming industry?

05:37:50 4 ANSWER: I think I got maybe a little bit bored of  
05:37:53 5 sort of like the advertising industry, and then I got the  
05:37:55 6 possibility to join -- join Supercell. And, yeah, I have  
05:38:00 7 never looked back since.

05:38:01 8 QUESTION: And why is that?

05:38:04 9 ANSWER: I had two of my own companies, and I feel  
05:38:08 10 that I have more, like, freedom and responsibility inside  
05:38:10 11 Supercell. So I think that's one of the biggest reasons.  
05:38:15 12 It's -- it's a great company to work at.

05:38:18 13 QUESTION: When did you join Supercell?

05:38:20 14 ANSWER: I joined Supercell about five years ago,  
05:38:23 15 in 2015.

05:38:25 16 QUESTION: What was your position when you joined  
05:38:30 17 Supercell?

05:38:30 18 ANSWER: It was called digital communications. So  
05:38:32 19 there was a team of three. We were working on, like,  
05:38:38 20 digital advertising or marketing things for -- for the  
05:38:41 21 games.

05:38:42 22 QUESTION: Before you became game lead, did you  
05:38:46 23 hold any other positions at Supercell?

05:38:47 24 ANSWER: Yeah, I actually joined Clash Royale team  
05:38:51 25 in 2017 as a live ops manager.

05:38:58 1                   QUESTION: And when did you became game lead?

05:39:01 2                   ANSWER: I became game lead of Clash Royale in

05:39:06 3 summer 2018.

05:39:06 4                   QUESTION: Let's take a step back. Can you please

05:39:09 5 explain to the jury what Clash Royale is?

05:39:10 6                   ANSWER: So Clash Royale is a mobile game. It's a

05:39:12 7 card battle game that you play -- where you play with

05:39:16 8 characters on this arena and try to destroy their enemy's

05:39:20 9 buildings. And you're playing against another player in

05:39:23 10 real-time.

05:39:23 11                   QUESTION: When was Clash Royale released?

05:39:25 12                   ANSWER: Clash Royale was released first in beta

05:39:31 13 just in couple of markets in January 3rd, 2016, and then

05:39:39 14 actually to sort of like the whole world -- the global

05:39:43 15 release was March 2016.

05:39:47 16                   ATTORNEY: Mr. Smith, can you please call up

05:39:51 17 PX-131?

05:39:54 18                   QUESTION: Mr. Ahlgren, can you please tell the

05:40:00 19 jury what this document is?

05:40:02 20                   ANSWER: Yes. So this is the first -- or like the

05:40:04 21 website freshly released on January the 3rd with the beta

05:40:11 22 release. Yeah, that's it -- that's what it is.

05:40:14 23                   ATTORNEY: Mr. Smith, can you please call out the

05:40:16 24 screenshots there?

05:40:17 25                   QUESTION: Mr. Ahlgren, can you tell me what's

05:40:21 1 happening in these screenshots here?

05:40:23 2 ANSWER: So these screenshots, basically you can  
05:40:25 3 see how the gameplay works. So there's characters on the  
05:40:26 4 battlefield of the arena going towards the enemy's towers,  
05:40:30 5 and those towers are the ones that you try to destroy. All  
05:40:33 6 the different characters have different abilities, and you  
05:40:35 7 use eight of them in -- in your deck that you choose for  
05:40:38 8 each battle.

05:40:39 9 QUESTION: How do users obtain cards in Clash  
05:40:44 10 Royale?

05:40:44 11 ANSWER: So you can open cards by -- if you win a  
05:40:47 12 battle, you earn a chest. And then there's a timer  
05:40:51 13 basically -- and when you unlock the chest, you get cards  
05:40:56 14 out of it, and you might unlock new cards or get more cards  
05:41:00 15 to the ones that you already own. And then basically the  
05:41:04 16 chests -- chests are the thing.

05:41:08 17 QUESTION: What are some other ways to obtain  
05:41:10 18 cards?

05:41:10 19 ANSWER: So you can buy the chest from the shop if  
05:41:13 20 you want to -- sort of like make your progress faster. You  
05:41:17 21 can win cards or chests in challenges. You can buy this  
05:41:24 22 monthly pass called Pass Royale and get cards as rewards by  
05:41:32 23 earning crowns that you get for destroying towers. And  
05:41:33 24 then you also can -- if you are -- if you belong into a  
05:41:36 25 clan, you can also ask your clan mates to donate cards for

05:41:40 1 you.

05:41:41 2           QUESTION: Can you briefly explain how users  
05:41:43 3 obtain donated cards?

05:41:45 4           ANSWER: So, yeah, first of all, you have to be in  
05:41:47 5 a clan. And then you can ask for your clan mates to donate  
05:41:54 6 certain amount of card that you already have unlocked. And  
05:41:59 7 then the request appears in the clan chats, and then your  
05:42:04 8 clan mates basically give you the donated cards.

05:42:05 9           QUESTION: If the user receives a donated card,  
05:42:09 10 can the user then upgrade that card?

05:42:11 11           ANSWER: Not automatically. So you always have to  
05:42:13 12 have, like, certain amount of cards to upgrade it to the  
05:42:19 13 next level when you -- when you also get more power to the  
05:42:22 14 card, but you also have to use gold to complete the  
05:42:26 15 upgrade. Gold is one of the currencies in the game.

05:42:34 16           ATTORNEY: Mr. Smith, can you please pull up a  
05:42:40 17 still from PX-142 at the 15-second mark?

05:42:40 18           QUESTION: Mr. Ahlgren, can you please explain how  
05:42:44 19 a user plays its cards during a battle in Clash Royale?

05:42:47 20           ANSWER: So in these images, you can see there's  
05:42:50 21 four cards available like below, and then there's this  
05:42:54 22 Elixir meter.

05:42:54 23           So each card has their own amount of Elixir needed  
05:42:59 24 to be used. And then basically the player use their finger  
05:43:04 25 to choose the card, and then use their finger -- finger to

05:43:10 1 put it on the -- on the battlefield or the arena.

05:43:13 2 And you can only put the card in there if there's

05:43:17 3 more Elixir in the Elixir meter than the card uses.

05:43:20 4 ATTORNEY: Mr. Smith, can you please pull up

05:43:24 5 PX-133 at the 27-second mark?

05:43:27 6 QUESTION: Mr. Ahlgren, what is on the screen

05:43:30 7 right now?

05:43:30 8 ANSWER: Yeah, here you can actually see how the

05:43:32 9 gameplay works. This video was released when we released

05:43:35 10 the -- the beta of the game.

05:43:37 11 Yeah, so player is choosing cards that they can

05:43:40 12 use that are less Elixir than you have in the Elixir meter.

05:43:47 13 QUESTION: You just mentioned the word "Elixir."

05:43:49 14 What is Elixir?

05:43:50 15 ANSWER: So in many games, they call it mana, but

05:43:54 16 we call it Elixir. So -- so Elixir is basically a currency

05:44:00 17 in the battle that keeps flowing all the time. And when

05:44:03 18 the player has enough Elixir to use a certain card, then

05:44:06 19 they can use the card.

05:44:09 20 QUESTION: Mr. Ahlgren, do you follow what's

05:44:11 21 happening in the mobile gaming industry?

05:44:13 22 ANSWER: Yes, quite high-level. So -- so, like,

05:44:19 23 big things, what's happening with Fortnite, different kind

05:44:24 24 of like bigger markets, but mostly concentrated on the --

05:44:30 25 sort of like the top 10 games.

05:44:31 1                   QUESTION: I want to talk a little bit about GREE.

05:44:34 2                   To your knowledge, has Supercell ever tracked or

05:44:37 3 followed GREE?

05:44:39 4                   ANSWER: No, not to my knowledge.

05:44:40 5                   QUESTION: And, to your knowledge, has Supercell

05:44:43 6 ever tracked or followed GREE's games?

05:44:46 7                   ANSWER: No, not to my knowledge.

05:44:48 8                   QUESTION: And, to your knowledge, has Supercell

05:44:50 9 ever tracked or followed GREE's patents?

05:44:53 10                  ANSWER: No, not to my knowledge.

05:44:57 11                  QUESTION: You understand that GREE has accused

05:44:58 12 the card donation and Elixir features of infringement,

05:45:03 13 correct?

05:45:03 14                  ANSWER: Yes, I understand.

05:45:05 15                  QUESTION: And has Supercell made any changes to

05:45:08 16 these features based on GREE's allegations in this case?

05:45:10 17                  ANSWER: No, we haven't done any changes.

05:45:13 18                  QUESTION: Would it be possible to make any

05:45:15 19 changes?

05:45:16 20                  ANSWER: Yes, it would be possible to make

05:45:18 21 changes.

05:45:19 22                  QUESTION: And if changing these features is

05:45:21 23 possible, why hasn't Supercell done that?

05:45:25 24                  ANSWER: Because we're not -- we don't think we're

05:45:27 25 doing anything wrong, so that's the reason.

05:45:32 1                   QUESTION: And what are some alternatives to these  
05:45:34 2 features?

05:45:35 3                   ANSWER: So for the card donation feature, we  
05:45:37 4 could basically make it work in a way that when you ask  
05:45:43 5 donated cards, it wouldn't get the card actually operating.  
05:45:49 6 You can still get the final card, for example, from chests  
05:45:52 7 or shop or challenges or -- or, like, some other place in  
05:45:56 8 the game.

05:45:58 9                   QUESTION: And what about the Elixir feature?

05:46:00 10                  ANSWER: So the Elixir feature, we could just  
05:46:05 11 change the sort of like order of -- of the sequence  
05:46:09 12 happening on the background, and the players wouldn't  
05:46:13 13 notice any -- actually any change in the -- in the feature.

05:46:15 14                  QUESTION: Switching gears a little bit. How does  
05:46:19 15 Supercell make money from Clash Royale?

05:46:21 16                  ANSWER: So, mainly, first of all, like most of  
05:46:26 17 the players, they don't use any money to the game. So the  
05:46:28 18 game is designed in a way that you don't have to spend  
05:46:31 19 money. You can still -- still play the game and enjoy,  
05:46:36 20 like, almost all the features.

05:46:38 21                  And then the upgrading of the cards is the thing  
05:46:42 22 where usually players want to boost their progress by  
05:46:46 23 spending money. So you -- they might buy chests from the  
05:46:50 24 shop. They might buy the monthly pass, which is more like  
05:46:55 25 engagement base. So you collect crowns to earn -- earn

05:46:58 1 rewards.

05:46:59 2 And then we also have these live ops offers or  
05:47:04 3 sales happening -- happening in the game, and that's one of  
05:47:06 4 the revenue streams.

05:47:07 5 QUESTION: What keeps players coming back to Clash  
05:47:10 6 Royale?

05:47:10 7 ANSWER: So I think the main reason is just like  
05:47:13 8 the core gameplay and the strategy. It's a game that is  
05:47:16 9 easy to learn but hard to master. So that's kind of like a  
05:47:21 10 long learning curve in the battles and sort of like in the  
05:47:26 11 upgrading.

05:47:27 12 And then -- then we just keep, like, constantly  
05:47:31 13 adding fresh content to the game with the updates. So the  
05:47:36 14 game keeps updating about every three months. So that's --  
05:47:39 15 that's one big reason to come back.

05:47:41 16 QUESTION: What kind of updates does Supercell do  
05:47:44 17 to Clash Royale?

05:47:45 18 ANSWER: We do new features, add new content as  
05:47:50 19 cards, or just, like, change the game balance like how the  
05:47:53 20 cards work between each other.

05:47:55 21 QUESTION: What are some examples of these balance  
05:47:57 22 changes?

05:47:58 23 ANSWER: So example of balance change is that we  
05:48:01 24 might have one card that is just, like, used a lot, and the  
05:48:08 25 win rates are high. Players are playing a lot, and we

05:48:11 1 actually might get some -- some even complaints about it.

05:48:16 2 And then we decide -- decide to take the power

05:48:18 3 level a little bit down just to make the other -- other

05:48:21 4 cards feel better, and it kind of like keeps the game

05:48:25 5 fresh.

05:48:25 6 QUESTION: How often does Supercell make these

05:48:28 7 balance changes?

05:48:28 8 ANSWER: We might do them with the updates --

05:48:31 9 nowadays we do it actually on monthly basis. Like whenever

05:48:34 10 a new season starts, there's balance changes coming in.

05:48:40 11 ATTORNEY: Mr. Smith, can you please pull up

05:48:43 12 PX-76?

05:48:44 13 QUESTION: Mr. Ahlgren, can you please explain to

05:48:55 14 the jury what this document is?

05:48:56 15 ANSWER: Yes. So this is release notes from one

05:49:01 16 of our sort of like smaller updates I would say.

05:49:05 17 So in the release notes, we basically just write

05:49:09 18 down whatever has happened or whatever has changed in the

05:49:14 19 current -- current client build.

05:49:16 20 QUESTION: And would this include the balance

05:49:19 21 changes you referred to before?

05:49:21 22 ANSWER: Yes, this -- I think in this update, I

05:49:27 23 think there's probably some balance changes in -- yeah, but

05:49:30 24 anyways, like, it's -- we might put the balance changes in

05:49:34 25 with the updates or -- or with a game maintenance.

05:49:40 1                   QUESTION: Mr. Ahlgren, you mentioned live ops  
05:49:43 2 before. What are live ops?

05:49:46 3                   ANSWER: So live ops -- we call live ops things  
05:49:50 4 that we can change dynamically in the game without these  
05:49:54 5 client updates.

05:49:55 6                   So, for example, the shop in the game works in a  
05:50:00 7 way that we can -- let's say there's a big holiday coming  
05:50:04 8 and we want to put holiday sales in the shop. Those are  
05:50:08 9 live ops events for us. And then we might have, like, a  
05:50:11 10 special weekend challenge, different kind of, like,  
05:50:15 11 gameplay mode for the players, and that's also called live  
05:50:18 12 ops.

05:50:18 13                   QUESTION: And are live ops connected to revenue?

05:50:21 14                   ANSWER: Yes, they are. Like I mentioned, it's --  
05:50:24 15 it's -- it's the sales, offers, those things, they are  
05:50:29 16 considered as live ops.

05:50:30 17                   QUESTION: What gameplay features in Clash Royale  
05:50:32 18 are most important to users?

05:50:35 19                   ANSWER: I would say it's the whole package of the  
05:50:39 20 game. It's really hard to put something above others.  
05:50:44 21 It's -- it's the battle -- it's the battle gameplay  
05:50:50 22 progressing in the game, kind of like players like to have  
05:50:54 23 fun and progress, basically.

05:50:56 24                   QUESTION: Can you put a monetary value on any of  
05:50:59 25 the gameplay features in Clash Royale?

05:51:01 1                   ANSWER: I wouldn't put a monetary value. It's,  
05:51:05 2 once again, about the whole package. It's the -- it's --  
05:51:08 3 it's like a complex game put into a simple -- simple  
05:51:12 4 package. I would say that's -- that's the -- that's the  
05:51:15 5 thing.

05:51:16 6                   QUESTION: Thank you, Mr. Ahlgren.

05:51:18 7                   ATTORNEY: I have no further questions. I'll pass  
05:51:20 8 the witness.

05:51:21 9                   QUESTION: Good morning, Mr. Ahlgren. It's nice  
05:51:24 10 to see you again.

05:51:25 11                   ANSWER: Good morning. Nice to see you again.

05:51:28 12                   QUESTION: My name is Taylor Pfingst, and we met  
05:51:32 13 previously at your deposition, correct?

05:51:33 14                   ANSWER: Yes, that's correct.

05:51:35 15                   QUESTION: And Supercell has named you as a  
05:51:39 16 corporate representative in this case; is that correct?

05:51:40 17                   ANSWER: Yes, that's correct.

05:51:45 18                   QUESTION: Mr. Ahlgren, you don't have a computer  
05:51:47 19 science degree, right?

05:51:50 20                   ANSWER: No, I don't have one.

05:51:53 21                   QUESTION: Okay. So you don't write source code,  
05:51:55 22 do you?

05:51:55 23                   ANSWER: No, I don't write source code.

05:51:57 24                   QUESTION: And you don't read source code either,  
05:52:02 25 then, correct?

05:52:03 1 ANSWER: Yes, that's correct.

05:52:04 2 QUESTION: And, Mr. Ahlgren, you've never reviewed

05:52:07 3 any patents before, right?

05:52:08 4 ANSWER: No, I haven't.

05:52:14 5 QUESTION: And you testified earlier today about

05:52:15 6 the Elixir feature in Clash Royale. Do you recall that

05:52:18 7 testimony?

05:52:20 8 ANSWER: Yes.

05:52:22 9 QUESTION: In Clash Royale, each card has an

05:52:26 10 Elixir cost, correct?

05:52:27 11 ANSWER: Yes, that's correct.

05:52:29 12 QUESTION: But you can only play a particular card

05:52:32 13 when its Elixir cost is less than or equal to the current

05:52:37 14 amount of the Elixir you have, correct?

05:52:39 15 ANSWER: Yes, that's correct.

05:52:40 16 QUESTION: Because the Elixir disappears when you

05:52:44 17 play a card, right?

05:52:46 18 ANSWER: There's Elixir disappearing, but it's

05:52:49 19 actually -- like it's flowing at the same time. So it's --

05:52:53 20 when you play the card, it's like if your half Elixir

05:52:59 21 flowing, it's still there. So that's how it works.

05:53:02 22 QUESTION: Mr. Ahlgren, the troops of a card are

05:53:08 23 deployed in the arena when a player plays a card, right?

05:53:11 24 ANSWER: Yeah -- yes, correct.

05:53:16 25 QUESTION: And one of the goals of Supercell as a

05:53:18 1 company is the key player is engaged in the game for a long  
05:53:23 2 period of time rather than simply have them spend the most  
05:53:28 3 amount of hours possible right now; is that correct?

05:53:30 4 ANSWER: We are trying to design games that you  
05:53:38 5 don't have to -- like you can play, like, small amounts at  
05:53:41 6 a time, and that's at least with Royale, yes.

05:53:45 7 QUESTION: All right. And Supercell also tries to  
05:53:51 8 avoid having players grind in its games, correct?

05:53:54 9 ANSWER: It's also like we are trying to design  
05:53:57 10 games that are -- that are sort of like easy to play. Some  
05:54:00 11 of the players might still grind the games, it's -- it's  
05:54:03 12 possible. But that's kind of the goal.

05:54:04 13 QUESTION: Now, you testified earlier today that  
05:54:10 14 you started working at Supercell about five years ago,  
05:54:13 15 right?

05:54:13 16 ANSWER: Yes.

05:54:14 17 QUESTION: And you've been lead of Clash Royale  
05:54:20 18 for a little over two years; is that correct?

05:54:22 19 ANSWER: Yes, that's correct.

05:54:23 20 QUESTION: So you weren't part of the Clash Royale  
05:54:25 21 team when Supercell developed the card donation feature you  
05:54:29 22 testified to earlier, correct?

05:54:31 23 ANSWER: That's correct. I was not part of the  
05:54:33 24 team.

05:54:34 25 QUESTION: But as the game lead for Clash Royale,

05:54:38 1 you're familiar with the game, correct?

05:54:39 2 ANSWER: Yes, I am familiar, and I play the game.

05:54:42 3 QUESTION: And you testified earlier about the

05:54:47 4 card donation feature in Clash Royale. Do you recall that

05:54:49 5 testimony?

05:54:49 6 ANSWER: Yes.

05:54:51 7 QUESTION: And one of the perks of the card

05:54:54 8 donation feature is that you can request a specific card

05:54:58 9 you want from one of your clan mates, correct?

05:55:01 10 ANSWER: Yes.

05:55:04 11 QUESTION: You also testified earlier regarding

05:55:07 12 the ability to upgrade a card after you've received a clan

05:55:12 13 mate's donation. Do you recall that testimony?

05:55:14 14 ANSWER: Yes.

05:55:15 15 QUESTION: Mr. Ahlgren, you testified earlier that

05:55:22 16 the core gameplay keeps players coming back to the game,

05:55:25 17 right?

05:55:25 18 ANSWER: Yes, that's -- that's one of the things,

05:55:27 19 yes.

05:55:27 20 QUESTION: And Supercell hasn't changed its core

05:55:34 21 gameplay for Clash Royale, right?

05:55:37 22 ANSWER: There's -- there's the battle -- battle

05:55:40 23 and getting cards and kind of like the -- the mental game

05:55:43 24 of getting chests that has been similar since the

05:55:46 25 beginning.

05:55:53 1                   QUESTION: And the ability to upgrade your cards  
05:55:55 2 in Clash Royale is a feature that Supercell users enjoy,  
05:55:59 3 right?

05:55:59 4                   ANSWER: Yes, I would say like at least myself as  
05:56:02 5 a player, I enjoy upgrading the cards. It's -- it's -- it  
05:56:07 6 helps you progress in the game. So -- so I think it's --  
05:56:10 7 it's a good thing for the players, and they enjoy it.

05:56:14 8                   QUESTION: And one of the reasons that Supercell  
05:56:18 9 players make purchases in Clash Royale is to progress  
05:56:21 10 faster in the game, right?

05:56:23 11                  ANSWER: Yes, that's, I would say, the main --  
05:56:26 12 main reason, and then there's also -- also cosmetics that  
05:56:31 13 you can buy, but the main reason is the card upgrades.

05:56:36 14                  QUESTION: And the ability to upgrade is also an  
05:56:38 15 incentive for players to spend money, right?

05:56:42 16                  ANSWER: Yes, it is an incentive to spend money to  
05:56:46 17 progress faster.

05:56:47 18                  QUESTION: But is it true that only a small amount  
05:56:49 19 of players spend money in Clash Royale, as little as 4 to 6  
05:56:54 20 percent, right?

05:56:54 21                  ANSWER: Yes, that's true that it's a small  
05:56:57 22 percentage.

05:56:57 23                  QUESTION: And you testified earlier that  
05:57:04 24 Supercell hasn't made any changes to the game as a result  
05:57:06 25 of this litigation, correct?

05:57:07 1 ANSWER: Yes, that's correct.

05:57:11 2 QUESTION: Okay.

05:57:12 3 ATTORNEY: I can pass the witness, Shannon --

05:57:18 4 Ms. Turner.

05:57:21 5 QUESTION: Mr. Ahlgren, Ms. Pfingst was just

05:57:25 6 asking about upgrading cards.

05:57:27 7 What are the ways that players usually gain cards

05:57:30 8 to upgrade them?

05:57:32 9 ANSWER: User game cards to upgrade them -- so

05:57:36 10 it's like I mentioned earlier in the -- in the testimony,

05:57:38 11 it's -- it's from the chests that you earn from the game by

05:57:42 12 playing the battles, winning the battles, or winning them

05:57:46 13 from -- from challenges or buying them from the -- from the

05:57:50 14 shop, or actually getting higher up in the arena so you can

05:57:54 15 also un -- unlock cards when you -- when you earn trophies

05:57:59 16 from winning -- winning battles in the arena, you earn

05:58:03 17 trophies, and you also progress and unlock new arenas with

05:58:08 18 new cards in them. Those are the ways.

05:58:10 19 QUESTION: Thank you.

05:58:11 20 ATTORNEY: I have no further questions.

05:58:14 21 ATTORNEY: No further questions.

05:58:16 22 (Videoclip ends.)

05:58:17 23 THE COURT: Does that -- does that complete this

05:58:19 24 witness?

05:58:19 25 MR. SACKSTEDER: It does, Your Honor.

05:58:20 1 THE COURT: All right. Ladies and gentlemen of  
05:58:23 2 the jury, as I indicated, we're going to recess for the day  
05:58:26 3 at this juncture.

05:58:28 4 I'll ask you to take your notebooks and leave them  
05:58:31 5 closed on the table in the jury room. Please be available  
05:58:36 6 and ready to reconvene as close to 8:30 as possible in the  
05:58:40 7 morning.

05:58:40 8 We got a late start this morning. That was my  
05:58:43 9 fault, not yours. I'll try to be closer to our appointed  
05:58:49 10 time in the morning.

05:58:50 11 Travel safely. I think we all noticed there was  
05:58:53 12 some rain outside, so the streets may be wet.

05:58:56 13 Please follow all my instructions, including, of  
05:58:56 14 course, you would expect me to remind you, not to discuss  
05:58:59 15 the case with anyone. Follow all the other instructions  
05:59:01 16 I've given you. Travel safely to your homes. And I will  
05:59:04 17 see you in the morning.

05:59:05 18 The jury is excused at this time.

05:59:07 19 COURT SECURITY OFFICER: All rise.

05:59:08 20 (Jury out. )

05:59:30 21 THE COURT: All right. Be seated, please.

05:59:31 22 Counsel, let -- let me remind you of my earlier  
05:59:38 23 instruction to have a revised and updated jointly submitted  
05:59:44 24 final jury instructions and charge available to be  
05:59:46 25 submitted to the Court by 6:00 p.m. tomorrow.

05:59:49 1 You'll need to meet and confer, obviously, in  
05:59:52 2 updating this. Be sure that the Court receives your  
05:59:55 3 competing proposals and the joint submission in which  
06:00:01 4 they're contained in Word format.

06:00:03 5 This morning, at 7:00 o'clock, pursuant to my  
06:00:06 6 earlier instruction, binders were delivered to the Court --  
06:00:10 7 to the chambers of the Court. We got three copies. We  
06:00:14 8 need four copies. So please make it four copies in the  
06:00:18 9 morning to the extent there are surviving disputes that  
06:00:21 10 can't be resolved overnight through your ongoing  
06:00:24 11 meet-and-confer efforts.

06:00:25 12 I'll be available in chambers by no later than  
06:00:28 13 7:30 to meet with you in that event.

06:00:31 14 And we will, as we did today, read into the record  
06:00:35 15 the items from the list of the pre-admitted exhibits used  
06:00:38 16 during today's portion of the trial before I bring in the  
06:00:41 17 jury.

06:00:41 18 Also, I'd like lead counsel for both sides to have  
06:00:46 19 a conversation tonight with their local counsel to review  
06:00:49 20 the proper procedures for impeaching witnesses. It would  
06:00:53 21 probably be beneficial, and it shouldn't take more than  
06:00:56 22 about 20 minutes.

06:00:58 23 Both of your local counsel are experienced trial  
06:01:00 24 lawyers known to this Court to be well-versed in the proper  
06:01:04 25 way to impeach a witness.

06:01:06 1 All right. With that, we stand in recess until  
06:01:08 2 tomorrow morning.

06:01:09 3 COURT SECURITY OFFICER: All rise.

06:01:14 4 (Recess.)

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6

7 CERTIFICATION

8

9 I HEREBY CERTIFY that the foregoing is a true and  
10 correct transcript from the stenographic notes of the  
11 proceedings in the above-entitled matter to the best of my  
12 ability.

13

14

15 /S/ Shelly Holmes \_\_\_\_\_  
16 SHELLY HOLMES, CSR, TCRR  
17 OFFICIAL REPORTER  
State of Texas No.: 7804  
Expiration Date: 12/31/2020

18 9/14/2020  
19 Date

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